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ROYAL COMMISSION
ON
TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
FRIDAY,
DECEMBER 2, 1949.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

- - - - -

G. R. Hunter,
Secretary.

P.L. Belcourt,
Asst. Secretary.

- - - - -

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OTTAWA, ONTARIO
FRIDAY, DECEMBER 2nd, 1949.

MORNING SESSION

THE CHAIRMAN: Before resuming this morning, gentlemen, we think the time has come when we can tell you what we have decided upon in a matter which was raised here some time ago. I refer to that part of the case presented by the railways, and principally the Canadian Pacific Railway, concerning the Crow's Nest Pass rates statute.

At the previous discussion some time was taken up to argue that this Commission had power and jurisdiction under the order to inquire into the question whether or not anything should be done affecting that statute, and whether, as the concrete case is, section 325 (5) of the Railway Act should be amended.

The position now is that the statutory provisions regarding these rates are found in the restriction in section 325 of the Railway Act upon the powers of the Board to fix rates generally. We are asked to recommend that that restriction be struck out.

Now, there is no question about our powers; indeed, I may say it is our duty to inquire into the question of this particular statute, in view of the very wide wording of the Order-in-Council by which we have been appointed. We are asked to investigate all matters which come within the jurisdiction of Parliament, and particularly we are asked to look into all statutes which have any bearing on matters which might be described as railway legislation.

Now, as I said on the previous instance I have just mentioned, the case taken against the continuation of the present statutory rates is summed up in the Canadian Pacific Railway Company's brief at the bottom

of page 188 and the top of page 189. There are, therefore, six different grounds of attack against the continuation of the present method of fixing these rates. The only one that gives some concern is No.3. That is where the Canadian Pacific Railway alleges that under the present conditions the Crows Nest level of grain rates is not compensatory. We have had to ask ourselves whether we ought to go into that particular question or not.

After having looked into the situation, we are convinced that it would not be conducive to any real result, if we were to undertake now a study to determine whether these Crows Nest Pass rates are really compensatory. The Canadian Pacific Railway in its brief, has worked out a formula which is meant to convince us that the rates are not compensatory. That formula is far from being precise. It leads us to the position that the rates, in the opinion of the experts who worked out the case, are somewhere between thirteen and three-quarter million dollars in round figures, and seventeen million dollars, deficient.

If we were to start an inquiry into this question we should have to hear evidence as to whether the formula followed was a proper one, whether even then the proper results were obtained, or whether other formulae should be substituted, and so on.

We find that the Board itself, which has been attending to freight rate matters for so many years, does not appear to have on any occasion entered into an inquiry as to the compensatory nature of any particular rate. Anyone can, if they wish, correct me on that point.

MR. EVANS: My lord, I think I ought to say that the Board, in about 1924, received evidence on the compensatory nature of the grain rates.

THE CHAIRMAN: On these same rates?

MR. EVANS: Yes. Mr. Commissioner Boyce made a finding of fact at that time, that the rates were not compensatory. He said, "I find on the evidence that --" I would be glad to give your lordship the reference.

The difficulty is that that opportunity came only because this question of grain rates to the Pacific Coast for export was up at that time, and the matter of grain rates was therefore before the Board. My lord, I am corrected on that point; the Board was then considering the extension of the Crows Nest Pass rates to other points.

THE CHAIRMAN: Was there an issue made on which both sides were heard before the Board?

MR. EVANS: I think so. There are exhibits referred to by the Commissioner in his judgment, and he said that he found on the evidence.

THE CHAIRMAN: Was there an agreed finding? Was there contention about whether the railway's evidence was good or bad, or ought to be followed or disallowed?

MR. EVANS: So far as the judgment goes, it indicates that there was. The only Commissioner who made the finding was Commissioner Boyce.

THE CHAIRMAN: Was he in the majority or in the minority?

MR. EVANS: He was with the majority in the result.

THE CHAIRMAN: What you have just told me indicates to me that whatever inquiry was made it could not have been complete or decisive in the case before the Board since only one commissioner referred to it.

MR. FRAWLEY: I would have thought it was obiter, if it was part of a general freight rate inquiry. Do I

understand that it was not part of a general freight rate inquiry? My friend says the judgment was delivered in 1924.

MR. EVANS: Yes, and the finding was "I find from the evidence . . ."

THE CHAIRMAN: Perhaps that very case, if looked into, would show the difficulties surrounding such an inquiry as that. We do not say that such an inquiry ought never to be made, nor do we say that we have no jurisdiction to make it. We have the jurisdiction, but we have also a great many other things to do.

We have come to the opinion that should we embark upon an inquiry directed to find out whether or not these particular rates can be said to be compensatory, it would require a great deal of time and ^{the} calling of much expert evidence, because under present conditions the matter is of a very contentious nature. We think therefore, that it is impractical for us to undertake such an inquiry at this point. That, however, does not prevent in any way our considering the general allegations made, or the general views put forward as to why something ought or ought not to be done to this particular statutory provision.

Probably the matter has been brought to a head not so much by reason of the fact that these rates are or are not compensatory but because of the fact that when freight rates are increased generally all over the country there is no increase in these particular rates. The burden of any increase is of course spread over shippers of other commodities and in other regions of the country. It is alleged that that in itself is a bad thing.

As I say, we are prepared to hear whatever anybody may wish to present for or against the continuation of these rates, but we ought not, and we do not intend to, embark

upon a technical study of the question of whether or not these rates can be said to be compensatory. The C.P.R. has made this arduous study, no doubt for their benefit, or perhaps for general purposes, and it has arrived at a result which leaves a margin of some uncertainty about three and a half million dollars for one year. This illustrates, I think, the great difficulty of pursuing such a study.

After the consideration we have been able to give the matter we have decided that we ought not, and we do not intend, to embark upon a study of whether rates are compensatory or non-compensatory.

MR. EVANS: May I get clear, sir, whether the Commission is now holding that no witnesses should be produced by the Canadian Pacific in support of that portion of its brief that deals with this question? Does the Commission prefer that we do not produce any witnesses?

THE CHAIRMAN: We prefer that you should not do so. If such a witness can throw any light on the general question, and no objection is taken by anybody to him being heard, we will listen to him. If however, somebody did object on the ground that he is covering that question, we would have to pay attention to the objection.

MR. EVANS: I can say now that the witness who would deal with the compensatory nature of the grain rates, as far as that study is concerned, would be a witness who would not be giving evidence about any other part of the question of the Crow's Nest Pass grain rates, so far as I know now.

I should like to say, with of course the greatest respect, that the decision which the Commission has reached after careful deliberation, that I feel that the problem is one

of a forum. If we had an alternative forum in which to present our case of what we believe to be one of the most important elements in considering whether these rates should be statutory, I would have no difficulty. Again, with the greatest respect, I should like to say that it is a matter of very considerable disappointment to me, that the Commission has reached the conclusion it has.

THE CHAIRMAN: Does anyone else wish to say anything now.

MR. SHEPARD: Mr. Chairman, I think it would perhaps as well if I said something, for the record, from my Province. If the C.P.R. does choose to call a witness on this portion of its submission, I have no doubt that my instructions will be to object to that evidence being adduced, unless Manitoba is permitted to put in contradicting evidence on the same subject. My instructions, I am sure, would be to oppose the hearing of any evidence without our being given an opportunity of presenting the full study from our point of view.

MR. FRAWLEY: I can assure you, my lord, that I would be instructed to take the same position as that expressed by Mr. Shepard.

THE CHAIRMAN: Will you proceed.

MR. FRAWLEY: Mr. Harries?

MR. EVANS: Before Mr. Harries takes the stand, I may say that I have given Mr. Covert the reference to the decision I spoke of. Perhaps he would be good enough at this point to put it on the record.

MR. COVERT: That is the decision regarding the Crows Nest Pass rates, in 29 Canadian Cases, page 238.

THE CHAIRMAN: Is it in your brief, Mr. Evans?

MR. SINCLAIR: No; that decision is the appeal from

1. The first part of the paper is devoted to a general

discussion of the problem and the main results.

2. In the second part we consider the case of a

finite number of points and show that the

problem is solvable in this case.

3. In the third part we consider the case of an

infinite number of points and show that the

problem is solvable in this case.

4. In the fourth part

we consider the case of a

finite number of points and show that the

problem is solvable in this case.

5. In the fifth part we consider the case of an

infinite number of points and show that the

problem is solvable in this case.

6. In the sixth part we consider the case of a

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finite number of points and show that the

problem is solvable in this case.

9. In the ninth part we consider the case of an

infinite number of points and show that the

problem is solvable in this case.

10. In the tenth part we consider the case of a

it to the Supreme Court of Canada.

THE CHAIRMAN: It is in the appeal judgment that Commissioner Boyce's remarks are quoted?

MR. EVANS: No sir.

THE CHAIRMAN: I know I read them.

MR. SINCLAIR: That matter referred to certain of his remarks, but not what he said about compensatory rates.

THE CHAIRMAN: The Board's case will be found where?

MR. COVERT: In 29 C.R.C., at 238. Particular reference to which Mr. Evans refers is found at page 276. It was Commissioner Boyce, was it not, Mr. EVANS?

MR. EVANS: Yes, Commissioner Boyce.

THE CHAIRMAN: Very well, Mr. Frawley.

MR. HARRIES RECALLED

CROSS-EXAMINATION BY MR. O'DONNELL CONTINUED

Q. Mr. Harries, in speaking of this relationship between the livestock and meat and packing house products, you made reference to the fact that relationship of that kind had been considerable in the United States, and was in existence in the United States?

A. Yes sir, I did.

Q. You would not wish the Board to infer, I take it, that that was something of general uniformity in the United States, and that such ^{a rate} relationship applied throughout the United States with regard to shipments of livestock and packinghouse products?

A. They have accepted the fact that there is a relationship, and depending upon the circumstances - - -

THE CHAIRMAN: Will you please turn this way? I did not hear you.

A. The Interstate Commerce Commission has accepted the fact, I would suggest, that there is an important consideration there, and they have made relationships

between these two products in different areas, and there is no necessary relationship between what they have described in one particular area and what they have prescribed in another, except in all but a few cases the relationship is at or below what we would term the critical relationship.

Q. When you say "at or below", which direction is that?

A. They have made a relationship which does not discourage a movement of meat, and which in many cases is a very great encouragement to the movement of meat.

MR. O'DONNELL: Q. But the question of reasonableness of rates is a matter of paramount importance, as far as the I.C.C. is concerned at all times.

THE CHAIRMAN: Mr. O'Donnell, I wish to understand what you mean by the word "reasonableness".

MR. O'DONNELL: The aspect.

THE CHAIRMAN: Do you mean reasonableness with respect to the railway or the carrier?

MR. O'DONNELL: Yes; the rates per se.

Q. Mr. Harries, you do not suggest that the aspect of ratesmaking is eliminated by the I.C.C. in favour of the aspect which would have the rates determined solely upon the basis of this critical rate, in the relationship of such?

A. Not at all.

Q. In other words, I think it gets back to what you and I agreed at the outset: that there was merely one aspect, one factor that a regulatory body must look at in establishing a rates.

A. It is an important factor.

Q. I agree with you. You will agree also that there has prevailed considerable controversy in the United States

concerning these two critical rate relationships with respect to livestock and meat industry.

A. In view of the fact that they have always, when they made a new relationship, had to alter the Statute, there have been a lot of arguments.

Q. There are a lot of different interests: the interests of the packinghouse in one area, the interests of the livestock producer in another area, and so on.

A. Very generally. I would say the interests of the livestock producer has not been opposed to these adjustments.

THE CHAIRMAN: Is anything ever said in these cases about the interests of the consumer? I am addressing my question to Mr. O'Donnell.

MR. O'DONNELL: I am not as familiar with the matter as my friend Mr. Harries, but I would assume the I.C.C. must have the interests of all under consideration in making the rates; they must consider the shipper, the carrier, the producer, the manufacturer, the processor of the meat and in the end the consumer. I imagine that the rate is fixed upon the reasonableness, in so far as it is possible to obtain reasonableness, for all concerned, and in the light of the pattern of rates generally prevailing in all commodities which are carried.

Q. Now Mr. Harries, you mention several cases of the I.C.C. in connection with this particular matter of rates on packinghouse products and fresh meats, but you did not refer to what I think is an important decision. I refer to Ex Parte No. 168. Did you look at it?

A. Not at this particular point.

MR. O'DONNELL: My lord, Ex Parte 168 was a decision delivered on the 2nd August 1949. All I have is a mimeographed copy of it. At Sheet 55 of the mimeographed

copy, under the general heading of "Rates on Packinghouse Products and Fresh Meats", there appears this paragraph:

"The controversy between the interests mentioned, concerning the adjustment of rates on the live animals, and products thereof, namely, fresh meats and packing-house products, has been acute.

However, what has been presented to us in respect of a most sensitive and complex rate of adjustment or the composition of disputed differences, by no means goes to the boundaries of the area of the controversy. We could not settle it in this proceeding, and informal mediation through our administrative staff has been unsuccessful. Whatever we do in this proceeding almost certainly will lead to further, more particularized presentation of this many-angled controversy in form that all concerned can supply a record adequate for a decision, comprehensive as the scope of the many complex issues involved. In the meantime we must treat the commodities as we have previously."

The question is by no means settled, Mr. Harries, in the United States, is it?

A. The question of particular adjustment is never settled, when you have a delicate situation. The question however, of whether there is a relationship and the form of that relationship in general, is, I would submit, settled. It is part of the jurisdiction, as it were, of ^{state} the Inter/Commerce Commission.

If I may take one moment more, I would point out that in the United States the situation in this regard is much more complex than it is in Canada, because you have such a great number of producing areas and packing places there. The situation in the United States is very complex. They have made an adjustment. It would not be, I submit, nearly as complex here in Canada where we have much fewer places

to consider in the adjustment.

Q. A further thing is that in the United States, as this judgment says, there is considerable trucking of meats, that is livestock and fresh meats.

A. There is considerable trucking in Canada.

Q. Do you suggest that it is anywhere in the same percentage as it is in the United States?

A. I have never made a study of it.

Q. I wish to read this further extract from the same judgment:

"A large proportion of the livestock now moves by truck, and refrigerated trucks are now taking fresh meats and packing-house products which formerly moved by rail. Truck rates with refrigeration are generally less than the rail rates. Meat products are adaptable to truck movements."

However, all I am pointing out to you is that the whole problem is a very complex one, and the fixing of rates on those particular products you have spoken of is only one aspect of what must be considered by a regulatory body. A. I would agree with you sir.

Q. There are other raw materials of course which might possibly be subject to the same kind of study by a regulatory body. For instance, I think of pulpwood. Pulpwood is a raw material, which is turned into newsprint, and ultimately the newsprint becomes ^{scrap} paper and later the scrap paper is used to make cardboard, and the cardboard gets into cardboard boxes and in turn into scrap; then it starts all over again. Is it your suggestion that the Board of Transport Commissioners would, when determining rates on those six commodities, namely, pulpwood, paper, scrap paper, cardboard, cardboard boxes, and scrap

cardboard, have to sit down and work out a critical rate relationship between each one of those commodities, because it in turn becomes the raw material for some other commodity? Is that the type of study that would have to be made by the Board of Transport Commissioners, if your aspect of making rates were to be given any more prominent position than it has today?

(Page 11086 follows)

A. First of all, may I say that we are extremely interested in the matter which is referred to here, namely, pulp and pulpwood rates, because we anticipate that in Alberta we will have a new industry dealing with that particular matter, and although we did some work to try to get an example, we found that the absence of rates now and consequently, the necessity of going outside the area in making some kind of an assumption about rates ^{us} precluded from submitting an example. In connection with the problem dealt with in the Brief between input-output we have said that, first of all, it is the problem of the manufacturer or processor to come to the Board with evidence to show that, in fact, these relations do mitigate against the establishment of his industry or the continued operation of his industry at the source of the raw material, so that, first of all, it is not a matter of the Board going out and making a study; it is a matter of an individual who has the facts, coming to the Board and saying, "Here are the facts, and here is our argument. Will you consider that and if, in your opinion, we have a good case where may we ask for relief?"

Q. Is that the situation which prevails today? If a person were to go to the Board today and show discrimination against him by reason of a rate that someone has and says, "I want the rate that the railway is willing to give because the rate they gave me discriminates against me"?

A. We were talking Mr. O'Donnell, of rate relations, not particular rates which may or may not be discriminatory. It is wholly a problem of rate relationship.

Q. Rate relation can only be determined upon a review by the Board, and you have to initiate the application to the Board?

A. Not as to rate relation, but a particular rate, but when someone comes forward and says, "Let us look at all this", in our submission under all these circumstances -- and I think we are prepared to argue from the livestock cases that we have presented and some of the other cases -- that, in fact, the Board would not consider these relationships.

Q. But the Board will consider discrimination?

A. Yes, on particular rates.

Q. And yours would be a particular rate if you were to establish a plant at Calgary or Edmonton, you would want a particular rate from there to whatever shipping areas that you had in mind, and if that rate was discriminatory you certainly are entitled under the law, to go to the Board; is not that the question?

A. We are concerned with rate relationship.

Q. So the Board is concerned with rate relation; you agree with that?

A. No, I don't.

Q. For instance, this pulpwood I submitted to you, that matter would be further complicated by a stop-off privilege at any one of these points where processing might take place?

A. We have said it would be open to the Board to take the position because of the complexity of the processing and the variety of the materials entering into it, which would provide for adjusting rates, therefore, they can take this position that there is not adequate evidence that existing rates are prejudicial to producer location.

Q. If you went to the railways and asked them for a rate in contemplation of processing material at a certain point, and you got a rate that you felt was discriminatory

against your location and to the prejudice of your operation by reason of a rate that somebody else has, do you say that the Board is not entitled to look into that aspect of the matter and rectify it?

A. It depends upon rate relations.

Q. It depends upon rate relations among many other things, but does the Board have the power to adjust them?

A. The Board has the power to look into these things.

Q. This stop-off privilege, is it your idea that this should be imposed upon the railway in any case?

A. We believe that the Board should have the power, after considering the evidence of both parties, to say that there shall or shall not be a stop-off or in-transit privilege.

Q. Notwithstanding the fact that there may be any stop-off or in-transit privilege accorded to any one else?

A. The Board would consider the matter of discrimination which may result from granting the privilege.

Q. Is it your suggestion that the business judgment of the railways should be interfered with to the extent of imposing upon them something they may not consider in their interests?

A. Certainly.

Q. By way of a stop-off privilege which is not accorded to anyone else?

A. As far as being accorded to anyone else, I do not think that would enter into the consideration, but it is certainly my submission that the Board should be able to tell the railways what to do in that regard.

Q. And thereby, as Mr. Evans suggested to you yesterday, cause the railway to be obliged to set up warehouses or storage facilities at certain points that might not be in their interest so to do?

A. I think I replied to Mr. Evans "Yes" and went on to explain.

Q. In asking that the Board be empowered to do that type of thing, do you suggest that the Board would be actually or virtually managing the railways?

A. They have the power today to tell the railways to put in facilities here and there. I say that this is no departure whatever. I think it is just a logical result from the powers that they do exercise.

Q. I think I might put in at this time the references to these agreed charges cases. There are, as far as I know, four that seem to cover the field. There is the case of the C.N.R. vs. The Good Rich Refining Co. Ltd., 50 C.R. and T.C., 161; C.N.R. and C.P.R. vs. Lion Oils Ltd., 50 C.R. and T.C., 166; Good Rich Refining Co. Ltd., vs. Canadian Freight Association, 54 C.R. and T.C. 140; C.N.R. and C.P.R. vs. McColl Frontenac Oil Co. Ltd., 39 J.O.R. and R., at page 1.

Q. Just one word on that; you said yesterday the small shipper is adversely affected by agreed charges. Are not many small shippers parties to these agreed charges?

A. Yes.

Q. I refer particularly to the agreed charge concerning the lumber industry in Western Canada. There are many parties to that agreed charge?

A. Yes.

THE CHAIRMAN: I would like to have some idea as to the extent of this practice.

MR. O'DONNELL: Of agreed charges?

THE CHAIRMAN: Would you say there are hundreds of them or thousands of them?

MR. O'DONNELL: I think 42 agreed charges is the extent of the agreed charges in force.

THE CHAIRMAN: Is that for your railway?

MR. O'DONNELL: That is for all railways, as I understand. I could easily arrange to provide the Commission with a copy of all of those if the Commission would like to have them. They are, of course, signed by many parties in some cases and in other cases by only a few shippers. In this lumber agreed charge there are some 35 or 40 names on that. I would be glad to provide the Commission with a copy of the agreed charges. There are 23 in effect at the present time.

THE CHAIRMAN: Not 42?

A. There were 42 executed but some of them have expired or have been cancelled. There are 23 of them now, but many parties to them and they carry a considerable amount of traffic.

MR. EVANS: It might help the Commission if I would look up the evidence of Mr. Jefferson in the 20% Case where he put on the record the revenue that our company got from this.

MR. O'DONNELL: Q. Would you agree, Mr. Harries, that they do help railways to compete with truck operators?

A. Yes.

Q. Is it your view that one agency of transportation which competes with another should be compelled whereas the other is free to compete on any terms it may please?

A. When there are very significant economic bases between the character of the carriers, I would say yes. I do not see anything wrong with having one controlled and the other not controlled.

Q. They are both competing for the same traffic in some respects?

A. In some respects.

Q. Why should one be impeded in its endeavours to compete with the other?

A. Because they differ in economic characteristics. I mean railways are essentially monopolistic in character and that the trucks are essentially competitive.

Q. Railways may have been that many years ago but with traffic being taken by trucks, do you suggest they are monopolistic today?

A. Yes.

Q. These developmental rates, Mr. Harries, does your submission mean that if they cannot be imposed upon the railways - - I mean the sub-normal rates you mention at page 55?

A. I think that as far as developmental rates go they would be in the initial instance agreed between the railway and the shipper.

Q. You would not impose them upon the railway in the initial stage at any time?

A. No, I think the railways are in the best position to appraise the likelihood of these creating traffic.

Q. In other words, if the developmental rates would be something that would prosper business you think that the matter could be left to their judgment at this stage?

A. I think for the initial instance.

Q. When a developmental rate has been in for some length of time and the railway might think it was time to consider the industry as grown up, would you suggest then that the railways should be obliged to leave the rate in?

A. We think there should be a time limit on a developmental rate there.

Q. And at the expiry of that time the rate should be allowed to lapse?

A. Unless the Board approves an extension of that rate.

Q. And the extension would be predicated upon the agreement of the railway in the first instance?

A. The extension would^{be}/predicated upon the Board's review of the facts or argument presented by both sides and any other interested shippers.

Q. Would you put the Board in the position of being able to impose an extension of the rate if the railways felt that it should not have continued?

A. Yes, I think I would.

Q. Then, would not that get back to this, that the railway would never in those instances initiate developmental rates?

A. No, I don't think so, sir.

Q. If they were faced with the possibility of having it perpetuated?

A. No, I don't think so.

Q. You don't think so?

A. No sir.

-- -- --

EXAMINATION BY MR. COVERT

Q. Just a few questions I should like to ask the witness Mr. Chairman. I just wanted to be clear Mr. Harries, as to your views on what would happen in certain of these cases. Now, for instance, the developmental rate; I just wanted to find out that there would be no restrictions on what the Board would hear as long as it was relevant.

It would include, for instance, the compensatory nature of rates, I assume?

A. Yes.

Q. That might be one consideration. If they were not compensatory, would you say that that would be a consideration which they should hear?

A. Yes sir.

Q. And even if they were not you might, for instance we will say in the case that you mentioned they had been put in for a five year period in the first instance. Then we will say, expenses and so on went up and they were not compensatory at the end ^{of} say, three years, they would still remain in for the five years, and if the industry would come along at the end of the five year period and say, "We cannot carry on", the Board would listen to them and they would also listen to the railway's views as to whether or not they were compensatory and would make a decision on the overall facts. Is that your idea?

A. Well, if there had been a general increase in prices at the end of the third year, or railway costs, and there was a general increase it would apply, I would suggest, to the developmental rate as with others.

Q. It would apply to that?

A. Oh yes.

Q. And even if that would not make them compensatory what I want to find out is whether or not the compensatory ^{would} nature/in the final analysis be one of the determining factors which might change the Board's decision as to whether or not they should be renewed?

A. Yes, it would.

Q. But your view might be that the Board might say "Well, there are so many other considerations involved

here - the protection of an industry and so on" that they might say "Even if they are not compensatory, we will allow this rate to continue"?

A. I think they would have to think very seriously about that proposition sir.

Q. But my understanding is, you would give the Board very broad powers, not being bound to stick to any one principle but to consider the overall picture and then make a decision?

A. Yes sir, I think that would be correct.

Q. Now then, in the case of the rate relationship, my understanding was that you suggested in that case that even if the rate which was to be put in to bring about this rate relationship was not compensatory, then you would say they would still put it in, the Board would order them to put in a non-compensatory rate?

MR. FRAWLEY: I intended to re-examine about that, but I am quite content that my friend should develop the point himself.

THE WITNESS: That was my submission, sir, yesterday, and when I made that statement I could not conceive of a situation where the establishment of a rate relation., of this critical rate relation, if we wish to call it that, could result in a rate which was not compensatory because we were concerned with relationships and if, in any particular instance, they was a relationship, say of two to one and the absolute costs in that instance were, say two dollars to one dollar, if either the two dollar rate or the one dollar rate be non-compensatory, you could simply double them both to get a four to two relationship and you would still maintain the critical relationship and neither of the rates would be non-compensatory. So that when I

answered that I could not conceive of a situation in which the rates would be non-compensatory.

MR. COVERT: Are you saying this then, Mr. Harries, that you would not expect the Board to put in a non-compensatory rate to bring about this rate relationship?

A. Yes, that is what I am saying, that we would not want a non-compensatory rate, improbable as it seems. If we just accept that it might happen, then our position would be contrary to what I said yesterday, that we would not want a non-compensatory rate, not in that instance.

Q. And do you mean the raising of both rates? Rather than putting in a non-compensatory rate do you mean the raising of both rates and one a great deal more than the other but, in any event, you would have them adjusted so that the rate relationship was there and both rates were compensatory?

A. Yes, both rates should be compensatory. We say that there may be certain circumstances because of the input-output ratio where you just can't by keeping the two rates reasonable, that is in themselves reasonable, that you can't make that adjustment. In that case then, we would say that this practice that we suggest just cannot be applied. It is not just going down the line all the time with it; if it is obviously impractical in a given situation, well then, it has to be discarded.

THE CHAIRMAN: What has to be discarded?

A. This critical rate relation.

MR. COVERT: In other words, my understanding is that you say this one factor and one factor only, but it must be taken into consideration, if someone complains that it is not?

A. Yes, we think it is an important factor and it certainly should be considered.

Q. Now, on page 52 of your submission where you deal with these geographic, climatic and economic conditions, I just wanted to make sure that I understood you there. You say again, I believe, that in this case (correct me if I am wrong) you say that the railways are in fact the arbiters of the policy here. Is that right?

A. Yes sir.

Q. And you say that they should not be, and do you say that the Board should be?

A. We say, sir, that the Board should take a more active role.

Q. Now, can they take a more active role without actually being the arbiters? That is what I wanted to know.

A. I would submit, sir, that they can take a more active role without being the arbiters.

Q. Well, can I find this out first? Do you suggest that in any case that comes before the Board, that they should have the power to say "Well now, the rate in this geographic location should be lowered" because of certain geographic disabilities under which they suffer?

A. The discussion in connection with these geographic, climatic and economic conditions deals particularly, sir, with market competition, and it was in that context that we were discussing it here.

Q. Well, is it only in the context of market competition that you say these things should be taken into consideration?

A. Well, as far as this particular section is concerned, yes sir. In our Brief, our rate Brief, our views with regard to the rate structure in general will,

I think, deal with this particular problem.

Q. Now, I would like to find out if you thought that the Board should, for instance, assess geographic, climatic and economic conditions and give effect to them in the making of any rates?

A. I would say that that problem would be dealt with in our general Brief sir.

MR. FRAWLEY: I just want the Commission to understand that there is no attempt on my part or the witness's to do any evading. We have broken up the submission and the very problem my friend is discussing now with Mr. Harries will be dealt with quite amply in the rate principles Brief.

THE CHAIRMAN: By Mr. Harries?

MR. FRAWLEY: No, not by Mr. Harries, by Mr. Darling. It will be the next Brief.

THE CHAIRMAN: In other words, you have a better witness on that particular point than the present one?

MR. FRAWLEY: I would not say that, sir; it is more general.

THE CHAIRMAN: I am not saying a better man; he is the one you put forward as your witness on this point?

MR. FRAWLEY: That is what I was trying to say, sir.

THE CHAIRMAN: We have been following the practice up to here of acceding to that and calling the other witness.

MR. FRAWLEY: Yes.

MR. COVERT: Then, on the stop-off privilege - I just want to clear up one point, and again my understanding

is that you would give the Board the broadest of powers. They would consider all factors?

A. Yes, they would consider the arguments that are brought forward to them by the two parties. I would presume they would be all the relevant ones.

Q. And you do not say that any particular weight should be given to anything? They would be the ones to decide the weight to be given to each fact?

A. Yes, they would.

Q. And I presume that if it meant the building of facilities, perhaps largely expensive facilities, you would say that that would be a consideration that might lead to the dismissal of any application for stop-off privileges?

A. Oh, yes sir.

Q. And the question of discrimination would still be one of the factors to be considered?

A. Yes sir, as it is today.

Q. Now, on the question of rate groupings, have you Volume 56 of the transcript before you?

A. Yes sir.

Q. It starts at page 10755 and continues on for four or five pages. Now, from that I gather that regardless of the distance involved, there might be a consideration which you say should lead the Board of Transport Commissioners to effect a rate grouping so that all producers could get into a certain consuming area. Is that correct?

A. Regardless of the distance between a producing area and the market or between the different factories?

Q. The different producing areas and the

market. What I am trying to find out is, supposing one area was fifty miles nearer than the other, that would not be too great a distance for them to give the same rate?

A. Providing that the consuming centre was not just ten miles farther on from the nearest point. I think it would be a matter there, sir, of not doing away with the geographic advantage of the nearest point when it has a very decided geographic advantage, but when you have plants in the same general area and their market is, say, two hundred miles away, then our submission is that those should be grouped, the plants. This Magrath instance, for example; on the rates to Edmonton, Magrath paid at the time of the 30 per cent Case 16 cents more to Edmonton than to Lethbridge and we would say that that is an unwarranted advantage to give Lethbridge.

Q. I follow that Mr. Harries, but what I want to get down to is some principles. Now, for instance, the thought occurred to me of the three steel companies looking for a common market in the Central Provinces. Now you know generally the location of them?

A. At the Soo, at Hamilton and at Sydney. I don't think, sir, in connection with the Central Canadian market that it would be possible to establish a rate group there, but it may be possible, and indeed that is what I understand happens, that the general area east of Windsor, for instance, and north of Windsor, is all one on shipments to Winnipeg and, in fact, anywhere in Western Canada.

Q. That is what I wanted to find out from you. Do you think there would be distance factors and that they might be such that the Board would say, "No, that is too great a distance altogether"?

A. Oh, yes, sir.

Q. How do you think that would be determined?

A. Depending upon two things, the distance between the plants relative to the distance between the general producing area and the market, and secondly, whether or not the producing area is, in fact, one that is similar in character, and so on.

Q. You would apply this, for instance, with regard to, say the vegetable growing area so they could get into a market?

A. Yes.

Q. And to the milk producing area so it could get into market?

A. Yes, sir.

Q. Would there be any limitation on that; for instance, it might eventually reach the stage that the whole wheat growing area would be at the same rate to Fort William?

A. Yes, that may very well be the situation.

Q. Is there any danger in that as soon as you have one rate group area that everybody else wants one, and eventually you have nothing but group rates all over the country, and wouldn't some of the people claim discrimination because they are outside of that?

A. That may very well be, sir. Maybe the reason we come forward with the suggestion in this case is because we say the whole area in Central Canada with shippers such as we find in Alix that there is a different price when they come to ship down here.

Q. There must be some difficulties in working this

thing out and there must be the same result that would leave still further economics for enlargement of the area, or for some other claim that the rate should be extended to them?

A. Yes, the Board would have to exercise certain discrimination and sort out these claims.

Q. Is not that exactly one of the dangers that the Board, if it has these powers, gets into a position where it may be criticized continually by certain sections which say, "We have been discriminated against"? Perhaps, that is one of the reasons why, you should not give a Board such wide powers?

A. I would submit that the Board has those powers today and it has had complaints from different areas.

Q. Does it not say today that, generally speaking, some of the discretions are in the hands of the railways, and therefore, the railways take the blame rather than the Board?

A. Yes, that may be quite true, sir.

Q. My understanding then is that in the final analysis you say that because the railways are the arbiters and their interest may be different than the interest of a particular area, then you say they should not be?

A. Yes, sir.

MR. COVERT: What I wanted to do, Mr. Chairman, was to get the two things side by side. I think that is all.

MR. EVANS: Could I ask one question arising out of this examination?

THE CHAIRMAN: Yes.

RE-CROSS-EXAMINED BY MR. EVANS:

Q. You were talking to Mr. Covert about the grouping of rates on a canning plant at Lethbridge, Magrath, and Tabor, and my impression of what you said yesterday that that

might increase the rate from Lethbridge to get a group average to make the rates equal?

A. That is right.

Q. The rate from Lethbridge is a Fifth Class Distributing Rate published as a commodity rate?

A. Yes.

Q. You would have, in fact, to increase the distributing class rate from Lethbridge to get this result; is that what you mean?

A. No, I don't think that necessarily would be the case, sir; that you just publish the rate that moves the goods. You can put it on a point-to-point commodity rate.

Q. It would be greater than a Fifth Class rate?

A. It would be greater than a Fifth Class Distributing Rate.

Q. My point was that you would have complaints from Lethbridge against the distributing points, would you not?

A. If you increase a rate at any time you will have complaints.

Q. Without discrimination?

A. Not if you establish a rate group.

MR. FRAWLEY: I do not suppose my friend is advancing that because a Fifth Class distributing rate in and out of Lethbridge, that would determine whether the rate group could be put in.

MR. EVANS: I am sorry to bother you. The witness said that it might mean raising the rate to Lethbridge, and I was wondering how he could raise a Fifth Class rate without causing discrimination to Lethbridge?

A. You would not raise the Fifth Class rate: you would raise the rate on canned goods and publish it as a commodity rate.

MR. FRAWLEY: I am prepared to go on with my next witness, Mr. Darling, Mr. Chairman.

MR. H. J. DARLING, CALLED:

MR. FRAWLEY: This brief is one called Rate Making Principles and The Rate Structure.

THE CHAIRMAN: What is that?

MR. FRAWLEY: This, my lord, is the brief called Rate Making Principles and The Rate Structure, and the witness is Mr. H. J. Darling.

Q. Your full name is Howard Jackson Darling. This is Mr. Darling's first appearance before the Commission and his qualifications are not in the record. You graduated in Commerce and Finance from the University of Toronto in 1936?

A. That is right.

Q. You took a degree of M.A. in Economics from the same University in 1938?

A. Yes.

Q. And for the following three years you were financial journalist and assistant editor of the Monetary Times?

A. Yes.

Q. Following that you were with the Canadian Pacific Railway in 1941 and 1942 and in 1945 and 1946, with war service in-between, in the comptroller's department and statistical bureau?

A. Yes.

Q. You were with the Dominion Bureau of Statistics in 1946 as Assistant to the Chief of the Transportation Branch?

A. Yes.

Q. And early in 1947 you were retained by the

Province of Alberta to study the Alberta freight rate problems and to prepare the submission of the province as to freight rates?

A. That is right, sir.

Q. And you did appear before the Board of Transport Commissioners in the Mountain Differential Case and presented the brief of the Province of Alberta in that case to that Board?

A. Yes, sir.

Q. Now, Mr. Darling, you have prepared the brief which we have called Freight Making Principles and the Rate Structure, and will you proceed to put it in the record?

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Rate Making Principles and the Rate StructureErrata

- p. 3, line 8 - "con-competitive" should read "non-competitive".
- p. 9, line 12 - "function branch lines" should read "function of branch lines".
- p. 11, line 26 - "main of this Act" should read "meaning of this Act".
- p. 12, line 10 - "competitive" should read "competitive".
- p. 13, line 29 - "3 J.O.R. & R. 18" should read "3 J.O.R. & R. 318".
- p. 29, line 4 - delete "in place of class rates".
- p. 34, line 1 - "even" should read "ever".
- p. 57, - Distributing rate (B) from International Boundary to Saskatoon of 87 cents should be 91 cents.
- p. 58, - Prairie drain tile rate for 50 miles of 9 cents should be 9½ cents.
- p. 60, - Ontario-Quebec first class rate for 2000 miles of 642 should be 646.
- p. 64, Item 940 - "Salt Lake" should read "Salt Cake".

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RATE-MAKING PRINCIPLES AND THE RATE STRUCTUREI INTRODUCTION

In this Submission will be outlined the general principles upon which it is proposed that the Canadian freight rate structure should be based. The procedure will be to define and explain the central concept "rate equalization", and to indicate the extent and nature of the exceptions to this general principle that should be permitted.

The general principles advocated herein by the Province of Alberta are not offered as panaceas to meet all difficulties of so complex a problem as freight rate regulation. Any practical proposals on this subject must include sufficient provision for flexibility in regulation. It is not our view that satisfactory results in the regulation of freight rates can be obtained by rigid adherence to any one set of principles. But having made this concession to the need for flexibility in regulation, it nevertheless remains true that satisfactory regulation is impossible without some consistent principles on which judgments can be based. But once the general principles that determine the form the rate structure should take have been decided upon, the familiar elements and concepts of regulation such as "just and reasonable rates", "unjust discrimination", "undue preference", "detriment", "similar circumstances and conditions" take their definitions and find their place in the general scheme in terms of those principles. The latter act as mooring-points for the whole system and prevent the confusion that is created by the intrusion of ill-defined concepts which cannot be related in any fixed manner to the system itself. Under such conditions it becomes difficult to obtain a clear conception of the purpose and nature of regulatory action. It is our submission that the persistence of many of the anomalies in the rate structure which will be brought to the attention of this Commission can be explained in large part by the fact the essential tools for satisfactory regulation--

the basic concepts used--have been rendered ineffective by the failure to define them in terms of an acceptable set of general principles.

In this Submission the general principles will be defined in terms of what their application to the rate structure would involve, so as to provide concrete standards by which fair and reasonable rates can be judged. As a matter of convenience, these general principles will be referred to collectively as the "equalization principle". The latter term may sometimes be understood to include both the positive requirements of rate equalization and the exceptions or other conditions which warrant departures from the initial uniformity of rates.

The immediate consequence of rate equalization would be the removal of existing regional differences in class and non-competitive commodity rates. Until that is accomplished any plan of revision would be incomplete. The circumstances under which regional differences in transportation conditions might be given recognition and the form which that recognition would take will also be dealt with in the course of this Submission.

II RATE EQUALIZATIONA. Definition of the Equalization Principle

The equalization principle advocated by the Province of Alberta comprises the following requirements:

- (1) Class rates within all regions should be uniform.
- (2) General commodity mileage scales should be uniform in all regions for each commodity involved.
- (3) Normal commodity rates--being the accepted formulae for establishing specific con-competitive commodity rates--should be uniform in all regions for like commodities.

The above conditions form the foundation for the rate structure. It is obvious, however, that complete uniformity can not be realized in practice. It is important that departures from this uniformity be permitted in order to transfer the principle from a pure theory to a practical and acceptable solution to the freight rate problem. The exceptions include the following:

- (1) Commodity discrimination: the practice of charging different rates for different commodities as exemplified in the freight classification should be continued, although not necessarily in its present form.
- (2) Competition: carriers may be permitted to meet competition of other carriers subject to certain limiting conditions described in Part IV of this Submission, and in the Alberta Submission on the Long-and-short-haul Rule.
- (3) Market competition: carriers may be permitted to meet market competition subject to the same conditions as for carrier competition provided that no disadvantage is created at other origins or destinations.
- (4) Commodity rates on specific movements of commodities may continue to be made without the carriers incurring automatically the obligation to extend them to all other movements. Differences in the nature of the movements, e.g. those from primary

producer to processor; those covering movement of semi-manufactured goods; those covering movement of manufactured goods direct from point of manufacture; export or import rates, and other similar cases, may authorize a difference in rates; provided that, within each of the preceding types of movements the same basis of commodity rates should be available to all shippers in all regions of the country.

- (5) The level of rates established for reasons of national policy will be determined by the nature and aims of the policy in question.

Perhaps the most important consequence of accepting the equalization principle as a starting point is that some historically important determinants of rates and rate levels would be ruled out, or at least greatly restricted in scope. This step would not involve a radical transformation of the rate structure, since there has been a noticeable trend in the direction of equalization for many years. A similar and even more pronounced trend can be noted in the United States experience where it has been fostered by changes in the Interstate Commerce Commission, notably in Class Rate Investigation, 1939, reported in (1945), 262 I.C.C. 447 which on appeal was upheld by the United States Supreme Court. See State of New York v. United States (1947) 331 U.S. 284.

In defence of differences in regional rate levels, cost of service, differences in traffic density, and competitive conditions have been relied upon in varying degree. Under the method advocated in this Submission cost of service would remain primarily as a determinant of the general level of rates for the system as a unit. It would continue to be one factor influencing the assignment of commodities to the various classes in the freight classification, and it would also be used wherever it becomes necessary to determine minimum levels for competitive rates. Likewise competitive conditions would not be a determinant of the general rate level within a region, but would be grounds for permitting departures from that rate level in particular cases.

It is proposed in the succeeding sections of this part of the

Submission to discuss in turn, (i) the origin of regional differences in rate levels in Canada, and the reasons offered for those differences; (ii) the case for the equalization of rates on a system basis as opposed to a regional basis; (iii) rate equalization and the Railway Act; (iv) the rate equalization in the United States; (v) equalization and regional transportation conditions.

B. Origin and Asserted Justification for Regional Differences in Rate Levels

In this section attention will be given mainly to the class rates, although it will be understood that commodity mileage rates show many similarities in development. The commodity rates will be discussed in a later section.

The Canadian rate structure has developed on a piecemeal basis, differences in classifications and rates being at one time conterminous with the extent of small local systems. The consolidation of many small railways or their absorption into larger systems was paralleled by the disappearance of many local rate scales and the gradual extension of a common scale over an entire geographic region. The consolidation of class rates became stabilized at a relatively early date at the boundaries of geographical regions although the transcontinental railway systems extended their operations into all the main regions. Five main rate territories emerged, each with its own scales of rates:

- (1) Ontario-Quebec Territory occupies the central part of the country between Windsor and Sault Ste. Marie, Ontario, on the west, and Diamond Jct., Quebec, on the east.
- (2) Maritime Territory rate levels evolved independently of those in Ontario-Quebec territory. Originally lower than the Ontario-Quebec scale, in 1923 the Maritime scale was made identical with the Ontario-Quebec scale. Since 1927 it has been 20 percent lower than the Ontario-Quebec scale in compliance with the Maritime Freight Rates Act.
- (3) Ontario-Superior Territory comprises the "bridge" territory of

Northern Ontario between Sudbury and the Lakehead. Class rates in this territory are higher than the Ontario-Quebec class rates.

- (4) Prairie Territory extends from the Lakehead and Armstrong, Ont. to Canmore and Edison, Alta., and Crowsnest, B.C. The Prairie scale is higher than the Ontario-Quebec scale for distance over 100 miles and is irregularly related to the Superior scale, being higher in some cases and lower in others. It is used for interterritorial traffic between Prairie and Superior territories.
- (5) Pacific Territory covered the area west of Canmore, Edison and Crowsnest, but was merged with Prairie territory on July 1, 1949, by the Board's decision in the Mountain Differential Case.

There have been other regional scales on a higher basis than either Ontario-Quebec or Prairie scales, although these have been gradually reduced in number. On the Northern Alberta Railways originally a scale higher than Prairie scale applied, but this was removed from all but the Waterways Subdivision, on which it remained until 1946 when it was removed by the judgment of the Board in Drummond v. Northern Alberta Railways, (36 J.O.R. & R. 322). Since then class rates on the Northern Alberta have been the same as in the rest of Prairie territory. On the National Trans-continental and Lake St. John lines of the Canadian National Railways in Northern Quebec a scale higher than the Ontario-Quebec scale is still in effect.

A brief summary of the more important changes in rate levels since the adoption of the ten-class rate scales in the various territories is given in Appendices A and B. This summary traces the various changes in first class, standard and town tariff rates for a distance of 200 miles from 1884 to the present day. It should be borne in mind that the rate comparison in these Tables would not apply identically for all other classes nor for first class for other mileages. Not only is the relationship between classes different in the Eastern and in the Western territories, but also the rate of tapering for distance is different.

The original differences in rate levels arose from different cir-

cumstances in each case. The rate levels in Maritime territory have always been influenced to a greater or less degree by prior considerations of national policy, with rates on the government-owned Intercolonial Railway originally being set at lower levels than those in the Central Provinces. This difference in favor of Maritime territory was gradually reduced during the period 1913 - 1923 until at the time of consolidation of government-owned lines in the Maritime Provinces into the Canadian National System it was removed entirely. In 1927 with the enactment of the Maritime Freight Rates Act, Maritime territory class rates became 20 percent less than those in Central territory.

The reason for the original difference between the Prairie scale and the Ontario-Quebec scale appears to have been the light traffic density of Prairie lines in the early railway period in the West. The first standard mileage tariff published by the Canadian Pacific in Western Canada became effective May 7, 1881, for distances up to 145 miles. These rates were approximately the same as the winter rates then in effect on the Grand Trunk in Eastern Canada. This period of equalization was short-lived, however, and when it became necessary to provide rates for longer distances a new tariff of increased rates, approximately 50 percent above those in Eastern Canada, was prepared by Collingwood Schreiber, at that time Chief Engineer of the Government Railways. The reasons for the higher level of rates in the new tariff, which went into effect in the spring of 1883, are stated in Schreiber's letter to the Minister of Railways in submitting the tariff for approval:

"In accordance with instructions received from the Honorable Minister, I have prepared for his consideration a freight tariff for the Western Division of the Canadian Pacific Railway. This, it will be observed, is higher than tariffs of the Railways in Eastern Canada, but I think it is only in proportion to the comparatively greater cost of operating a railway in the North-West....and that the line runs for hundreds of miles through a district which, if not wholly unsettled, is very sparsely settled indeed, and which will yield but a very light traffic for some time to come." *

It is clear from this that light traffic density in Western Canada at the time when the Canadian Pacific was first opened for traffic

* Quoted in R.A.C. Henry et. al. "Railway Freight Rates in Canada", Ottawa, 1939, p. 91.

was the major reason for the initial difference in standard class rates. Higher cost of operation is also named as a factor, but it seems probable in view of subsequent operating experience in Prairie territory that very little of this was entirely independent of density of traffic. In Pacific territory the higher costs of operation in the mountains was the reason for the higher scale of rates, commonly referred to as the Mountain Differential.

C. Rate Equalization on the System Basis as opposed to Regional Rate Levels

Costs of operation and density of traffic are so closely related in transportation as rate determinants that it will be convenient to consider them as one. In this section we are contrasting the establishment of a single class rate level on the basis of the system costs with the establishment of different rate levels in different parts of the same system based on differences in regional costs.

In Canada, the areas covered by rate territories and the railway systems do not coincide, the two transcontinental systems operating in all main rate territories. Economically the principal rate territories in Canada are not autonomous but are functionally related to one another, just as the railway lines in the territories are organically related to the transcontinental systems of which they are a part. Under these conditions a segregation of regional revenues and costs for the purpose of determining regional rate levels involves not only practical difficulties, but also difficulties in principle. A railway system is operated as a unit in the sense that the objective of company policy is, quite properly, to make a maximum profit on the system as a whole. This is not to say that it is entirely a matter of indifference to the company what the regional results are, but merely that regional results are of secondary interest to system results. The separate lines and regions when merged into a single system become an organic unit which decreases the significance of regional results, particularly for use in determining rate levels. The differences in function that arise within a system are numerous, some examples of which are:

(1) Branch lines are constructed, not because of the volume or profitability of local traffic, but because of their value as feeders to the main lines. Main line traffic density often can be only built up with the aid of numerous branch lines. The costs of maintaining these lines is in large part a legitimate charge on the system, and indeed if it had to be otherwise the branch lines would seldom have been built in the first place. Almost any branch line in Canada might serve as an example of this particular division of function, but the best examples are those lines built to develop new areas. Many branch lines have been built for the purpose of developing grain, coal, lumber, pulpwood and similar bulk traffic.

The most recent illustration of the function branch lines in the system is provided by the Canadian National's Bell River branch in Northern Quebec.^{*} This new line which is to have a total length of 55 miles has been constructed to tap new sources of pulpwood in Northern Quebec for shipment to Windsor Mills, Quebec. The value of the line is obviously in the volume of traffic which it is expected to develop for the system. The distance from Barraute, Quebec, where the line connects with the rest of the system, to Windsor Mills, Quebec, is 503 miles. Its contribution to traffic on the system can therefore be expected to be great in proportion to the local traffic developed.

What applies to single branch lines in the system applies with equal force to the various regions or subregions of the system. The motive for constructing lines in originally undeveloped regions is to develop additional traffic for the system. Each addition to the system has the effect of increasing the density of traffic along the main lines and particularly at the heart of the system. In the development of the Canadian economy no important industrial area of a size rivalling that in the Central Provinces has appeared so that the entire economy is in effect still part of the hinterland of Central Canada.

(2) Control of the flow of traffic within the system may result in a heavy concentration of traffic on certain lines and through certain

* See House of Commons Debates, 1946, Vol. IV. pp. 4287-92 and pp. 4895-97.

areas. This often results from an operating policy of routing all traffic to the main lines as directly as possible even where parallel or shorter routes over secondary lines are available. While this may be an important factor from the standpoint of operating efficiency, nevertheless, it constitutes a further limitation to comparisons of profitability of different segments of a system. Its effect on traffic flow is clearly shown in the traffic density chart of the Canadian Pacific Railway for 1948. See Outline Submission of Canadian Pacific Railway to this Commission, Appendix p. 31. Obviously if the boundaries of rate territories were altered so as to shift certain important lines from one to another, regional operating results might be greatly changed.

(3) Lines which function as bridge lines, funnelling traffic from one region to another, also distort regional rate comparisons. Generally speaking, such lines will prove to be highly profitable on any comparisons of local costs and revenues even although they may originate or terminate almost no local traffic.

(4) Changes in ownership of a line may result in a widespread change of function not only in the actual line transferred but also in many other lines. A similar case would be the construction or abandonment of a connecting link within the system. The consolidation of the Canadian Northern and Grand Trunk Pacific Systems in Western Canada changed various stretches of the mainlines of the separate systems into secondary lines.

(5) The interest of the system as a whole necessarily will influence the particular way in which traffic will move. It may also influence the selection of traffic and encourage one movement to the detriment of other movements over the system's lines. The results of such a policy where they cut across regional divisions will be reflected in the regional operating results.

These differences in function of lines within a system make the use of regional costs alone for rate-making purposes subject to many qualifications. Carried to its logical conclusion such a method would result in lower rate levels wherever the traffic densities were higher. There

would result a method of rate-making based almost inversely on the ability to pay. The central areas, while benefitting from the traffic and markets created by the system, would not be making a proper contribution toward the support of the system. At the same time a higher level of rates in the outlying areas would be a factor retarding the development of those areas. The difficulties as well as the disadvantages of regional rate bases can only be avoided by an equalization of rates on a system basis.

D. Rate Equalization and the Railway Act

The status of rate equalization under the existing legislation is largely determined by the interpretations of Sections 314 and 317 of the Railway Act. Section 314 reads as follows:

"All tolls shall always under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise."

The meaning which the terms used in this Section are to have is indicated in Section 317:

"The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the main of this Act, or whether in any case the company has, or has not, complied with the provisions of the three last preceding sections."

From this section it will be noted that the Board has been left free to define as it sees fit the concepts which have to do with equalization. The Board's difficulty has been that while the very definitions of these concepts taken collectively will amount to a national policy on freight rates, yet the statute gives little positive indication of what such a policy shall consist. Under these circumstances it is perhaps natural that interpretations avoiding as much as possible any interference with the existing freight rate structure should have been preferred. Any step beyond that would threaten to place the Board in the position of

prescribing economic policy, a function which it has disclaimed for itself on many occasions.*

This combination of circumstances will explain the main difficulties that have stood in the way of rate equalization in the past. This can be made clearer by drawing a distinction between "personal" discrimination and "local" or "regional" discrimination. The term "personal" will be used here in a broad sense to cover, in addition to discrimination between persons at the same point, all discrimination over common routes to or from common destinations and origins and also discrimination between competitive points where there is a common destination or origin involved. This type of discrimination is clearly the type prohibited by the Act as can be seen from the phraseology of the Section 314 just quoted: "substantially similar circumstances and conditions", "passing over the same line or route", "charged equally to all persons and at the same rate". The identifying feature of this type of discrimination is the presence of some direct connection or common point between the two hauls compared. Sometimes this connection is due to competition but otherwise it may be a straight physical identity.

In contrast to this, the concept of "regional discrimination" is used here to refer to differences in similar rates for the same commodity in different regions. Prior to the formation of the Board of Railway Commissioners, the majority of complaints involved some form of personal discrimination. It was primarily to overcome abuses of this type that Parliament created the Board of Railway Commissioners in 1903. The early railway legislation in Canada, as in Great Britain and the United States, was particularly concerned with the removal of personal discrimination, and in this respect the present Railway Act has descended essentially unchanged from the early legislation. With respect to personal discrimination it may be said that the Act has fulfilled its purpose. Personal discrimination is no longer a serious problem for the reason that it is this type of discrimination which the Board has held to be prohibited by statute.

* See British Columbia News Co. v. Express Traffic Ass'n. 13 C.R.C. 176. National Dairy Council re rate on butter 12 J.O.R. & R. 144. Halifax Harbour Commissioners et al v. C.N.R. 20 J.O.R. & R. 221.

A considerable body of precedent has been built up dealing with the wide variety of conditions under which this type of discrimination is encountered.

However, as experience has fully shown, it is not sufficient to remove personal discrimination to assure general satisfaction with the rate structure and rate regulation. A more outstanding issue in the many controversies over freight rates in the past has been regional discrimination. Important attacks on regional discrimination were made in the Western Rates Case, 1914, (17 C.R.C. 123), in the Rate Reduction Case, 1922, 11 J.O.R. & R. 255, in the General Freight Rates Investigation, 1927, (17 J.O.R. & R. 132), and most recently in the Mountain Differential Case of 1949, (39 J.O.R. & R. 1).

In the past complaints on regional discrimination were often lodged on the grounds of unjust discrimination. But as the Board had already identified unjust discrimination with what has here been called personal discrimination, the complaints were rejected since obviously no question of personal discrimination was involved.

The fact is that complaints against regional discrimination have foundered largely because such discrimination is not recognized as being within the statutory prohibitions of the Act. It is true that Section 314, s.s. 4, of the Railway Act provides that "no toll shall be charged which unjustly discriminates between different localities." While this subsection is capable of being construed as forbidding regional discrimination it nevertheless is founded upon the concept "unjust discrimination" which has already been identified with personal discrimination. In several cases the Board has held that "actual detriment due to a difference in tolls and resulting from competition in the same market is necessary to establish unjust discrimination." See Empire Flour Mills v. M.C.R. (1913) 3 J.O.R. & R. 18; Spanish River Pulp & Paper Mills v. C.P.R. (1923) 12 J.O.R. & R. 268. Such a ruling plainly delimits the meaning of unjust discrimination to personal discrimination. Strictly speaking, the Act can only be held to prohibit regional discrimination if it happens to be at the same time personal discrimination.

Another possibility of attacking regional discrimination is provided by Section 325 which provides that the Board may disallow any tariff which it considers to be unjust or unreasonable. However, a protest under this section would also be unsuccessful if a reasonable rate were itself to be defined as one free from unjust discrimination. The tendency has been to hold that comparisons of rates in different regions are largely irrelevant. Provided the rates within each region are "reasonable per se" there remains little ground for comparing them with lower rates in other regions. The differences themselves have been justified by the Board by reliance upon several factors, e.g. cost of service, density of traffic, competition, historical circumstances, or mere geographical dissimilarities.

The removal of regional discrimination, or in other words, the establishment of the equalization principle, will have to surmount the barriers in the present Act and in the accepted interpretations of the statutory provisions by the regulation body. There are good reasons why the Board cannot be expected to surmount these barriers without clearer direction from the statute itself. As already pointed out, all decisions on the nature of the freight rate structure are in a sense policy decisions. The Board's reluctance to embark on its own initiative on any fundamental changes in policy can be understood. The absence of a plain statutory direction that there must be no regional rate discriminations is sufficient to explain the Board's position that its main concern is with unjust discrimination and undue preference.

The above interpretation of the issue is borne out by the fate of previous attempts to gain recognition of the principle of regional discrimination without being required to show explicit prohibition in the Statute. The best instance is provided by the history of Order in Council P.C. 886, passed June 1925. This Order in Council contains probably the most explicit reference to equalization of freight rates as a matter of government policy. Three paragraphs of this Order in Council are of particular interest in the present connection:

"The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade.

"The Committee are further of the opinion ~~that~~ to give effect to this policy, and considering the submissions made by counsel and important trade organizations representing different provinces and localities in the Dominion as to the disadvantages that would be suffered by such provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the body constituted by parliament with full powers under statute to fix and control railway rates.

.....

"The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries....." ★

It might be thought that with a statement of government policy as clear as this, the way was opened for the introduction of rate equalization in its broadest sense. However, in the General Freight Rates Investigation which followed, equalization was limited to that of prescribing branch line rates on grain in Western Canada equal to main line rates. Differences between standard class rates, town tariff rates in Eastern and Western Canada were left unchanged. Similarly, the Mountain Differential was not removed. The interpretation of P.C. 886 by the Board in the 1927 investigation apparently turned upon two phrases to be found in the passages just quoted, viz: "to the fullest possible extent" and "under substantially similar circumstances and conditions". The former phrase would appear to have been taken to mean "to the fullest possible extent permitted by criteria already applied by the Board". This would still permit regional costs, traffic densities and competition to determine general rate levels. The latter phrase necessarily brought

★ General Freight Rates Investigation, 33 C.R.C. 127 at p. 131.

into play the restricted meaning of unjust discrimination. Under these circumstances it is not surprising that the Board found that the P.C. 886 required no essential change in regulatory policy. In effect, this declaration of government policy became no more than a directive to the Board to review its previous judgments to determine whether the same criteria would permit at that time a greater degree of equalization. In the case of branch line and main line rates on grain the criterion of unjust discrimination was used to bring about equalization. But equalization between regions could not be supported by any of the criteria recognized by the Board.

The fact that so little progress toward equalization resulted from P.C. 886 emphasizes the present need for changes in the statute itself if any important change in regulatory policy is to be accomplished. The Board is precluded from taking effective steps towards equalization unless clearly directed so to do by the Act. Otherwise the Board may be open to the charge of determining policy rather than carrying out a policy determined by Parliament.

E. The Regional Discrimination Issue in the United States

Several features of the efforts to obtain regional equality in freight rates in the United States offer interesting parallels with those in Canada. Essentially the same problem was encountered in that the existing definitions of "undue or unreasonable preference" in Section 3 of the Interstate Commerce Act had been restricted to apply to personal discrimination alone. Efforts of the Interstate Commerce Commission on its own initiative to widen the definition were defeated by the Courts. Section 3 had provided that undue or unreasonable preference should not be given to any particular person, company, firm, corporation or locality. The United States Supreme Court found in Texas and Pacific Railway v. United States (1933) 289 U.S. 627, that ports were not localities within the meaning of the word as used in Section 3. The section was therefore amended by Congress in 1935 by the addition of the words "port, port

district, gateway, transit point". In the Transportation Act of 1940 a more determined effort was made to establish a concept of regional discrimination. At the same time Section 3 of the Interstate Commerce Act was again expanded, this time by the addition of the words "region, district, territory", which was clearly intended to enable the Commission to attack the problem of differences in regional rate levels. Section 5 (b) of the Transportation Act of 1940 was even more explicit:

"(b) The Interstate Commerce Commission is authorized and directed to institute an investigation into the rates on manufactured products, agricultural commodities, and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to Part I of the Interstate Commerce Act, as amended, for the purpose of determining whether said rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other, and to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist: Provided that the Commission in its discretion may confine its investigation to such manufactured products, agricultural commodities, and raw materials, and the rates thereon as shippers thereof may specifically request be included in such investigation."

The Interstate Commerce Commission interpreted these amendments and additions as laying down a definite policy for the removal of regional rate differences. In Class Rate Investigation, 1939, (1945) 262 I.C.C. 477 at p. 692 the Commission said:

"It is clear that the main purpose which Congress had in mind was to bring about a greater degree of equalization, harmony, and uniformity in the different regional or territorial rate structures of the country. The method employed to accomplish this purpose is equally plain. By the amendment to the substantive antidiscrimination provisions of section 3 (1) all discriminations in the form of undue or unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage, as between regions, districts, or territories, viewed as separate entities, were brought directly within the purview of the act along with all the other inhibitions previously included. We were then authorized and directed by the other provisions mentioned to remove any such discrimination found to exist in the proper proceeding. This means that such discriminations as those mentioned which result from differences in the methods of distributing the general rate burden in the several rate-making territories, or from any other cause, if not justified upon proper consideration of recognized elements of rate making applied in the light of the amended law are unlawful and should be corrected."

In support of this interpretation the Commission cited the explanation to the Senate, May 22, 1939, of Chairman Wheeler of the

Senate Committee on Interstate Commerce concerning the amendment to
Section 3:

"The previous provision with regard to 'discrimination' simply referred to discrimination as to 'locality, port, port district, gateway, transit point' without specifying the region, district or territory. So we felt that by broadening the language we would at least take away that excuse, and we would provide expressly that the Commission should not discriminate in its rate structures."
(Congressional Record, page 5889, vol. 84, part 6, 76th Congress, 1st Session.)

The Interstate Commerce Commission's decision in Class Rate Investigation, 1939, supra, prescribed uniform class rates within and between all rate territories with the exception of Mountain-Pacific. This decision was upheld by the United States Supreme Court in State of New York v. United States, supra, so that the concept of regional discrimination can now be said to be firmly established in the United States.

F. Equalization and Regional Transportation Conditions

The demand for rate equalization has in its aim the removal of many regional rate differences in Canada. The chief grounds for this demand are the following:

- (1) The existing differences have not been arrived at in any consistent manner, but are largely historical in origin.
- (2) The relating of rate levels to regional costs and traffic densities does not recognize the organic relationship of the different parts of a transportation system to the whole.
- (3) Differences in regional costs and traffic densities are not adequate standards by which to determine regional rate differences. Revenues and investment must also be taken into account.
- (4) Competitive conditions of earlier periods should not influence the levels of class rates today. Competition may be met by the publication of competitive rates lower than the normal level.
- (5) For reasons of national, economic and social policy it is

desirable that rate equalization be as thorough as possible.

By themselves, neither differences in regional costs nor general competitive conditions afford sufficiently sound grounds for departures from a general level of equality.

There remains the problem of setting the limit to which rate equalization should be carried. The advantages of rate equalization from a social and economic standpoint would be considerable to the country as a whole. Nevertheless we do not suggest that they should outweigh at all times such natural advantages in transportation conditions which particular regions may possess. While we take exception to any suggestion that the rate structure as it stands is the effective measure of any regional advantages or disadvantages as may now exist, we are not opposed in principle to permitting these advantages to be reflected in general rate levels in some fashion.

The index of such regional advantages should be the regional operating ratios, including an allowance for the investment in each region. In comparing the ratios for two regions, small or fluctuating differences should not warrant any departure from equalization. It is also important that full allowance be made for the organic relationship of each region to the system as a whole. Otherwise one region may be unduly advantaged by virtue of the revenue and traffic developed in other parts of the system. However, if over a reasonable number of years there is maintained a consistent difference in earnings ratios between regions, in the sense we have just indicated, a difference greater than could be attributed merely to temporary fluctuations in traffic or to the positions of the regions within the system, then some degree of departure from equality in the general level of class and non-competitive rates might be considered. Such a difference might be regarded as some indication of the transportation advantages enjoyed by a region, over and above the advantages accruing to it from its relationship with other regions in the system.

The advantages of this method of reflecting advantages in transportation conditions are that it would avoid the misleading exaggeration of regional advantages measured by a standard of regional

costs alone. It would recognize that differences in the consist of traffic in different regions may produce approximately equality in earnings at a common level of rates, although there may be wide differences in unit costs and traffic densities. It would also recognize the existence of a zone within which the regional earning ratios may fluctuate without warranting a departure from rate equalization.

III CHANGES IN THE RATE STRUCTURE REQUIRED BY
THE EQUALIZATION PRINCIPLE

A. The Class Rates

(1) A Uniform Scale of Rates

The present standard and distributing class rates in each territory should be replaced by a single scale of class rates based initially on Ontario-Quebec town tariff rates and applying within all rate territories. This scale should also apply as a maximum for class rates between Eastern and Western Canada. By this means the dual system of class rates would be replaced by a single scale of class rates, and the discrimination resulting from the restricted application of distributing and town tariff rates would be removed. The selection of the town tariffs as the base is governed by the fact that they have served as normal class rates in Ontario-Quebec territory for over forty years. Unlike Prairie class rates they were not initially placed at a higher than normal level to offset light traffic density. Prairie class rates still show the effect of these early conditions.

The extent to which the distributing rates displace standard rates as the effective rates is greater in Eastern Canada than in Western Canada. The extent to which the rates apply may be briefly reviewed here:

Town tariff rates apply:

- (a) on traffic in both directions from and to numerous town tariff points in Eastern Canada.
- (b) as maximum rates to and from intermediate points.
- (c) between all stations in groups in Western and Eastern Ontario between Windsor and Montreal as provided in the International Rates Case, 1907. See Annual Report of Board of Railway Commissioners, 1908, in Sessional Paper 20c, Volume 43 (1909).
- (d) as commodity rates on specific commodities to and from particular non-town tariff points.
- (e) as truck competitive rates between all stations on higher class traffic.

The Western distributing rates apply:

- (a) outbound only from larger cities and towns designated as distributing points.
- (b) as maximum rates to or from intermediate points in conformity with (a).
- (c) as commodity mileage rates where published as such.
- (d) inbound to certain distributing centres on certain commodities when published as commodity rates.
- (e) as truck competitive rates between all stations up to a distance of 400 miles for third class and higher.

The application of the town tariffs in Eastern Canada is more widespread than that of the distributing rates in Western Canada because of the numerous town tariff points concentrated within a relatively compact area and because of the two-way application of the rates.

The dual system has been defended in the past by pointing out that the distributing rates (including the town tariffs in that term for convenient reference) have been extended to apply wherever traffic movements of any considerable volume were offered. The burden of the standard rates has been minimized by the claim that only small or occasional traffic movements are charged such rates. Whenever traffic volume warranted, it has been claimed, the railways have published distributing rates. In this way, by far the greater part of the class rate traffic moves on distributing rather than standard rates.

A class rate structure of this type involves an element of volume discrimination which should have no place in such a rate structure. The class rates are the basis of the rate structure, being the rates applicable in the absence of conditions justifying commodity rates. That there should be, in effect, two levels of maximum rates applying over the same territory, the lower of which applies to the larger cities and towns and the higher to smaller towns and villages, would indicate that mere size was being given undue preference.

It cannot be too strongly emphasized that the reasonableness of a rate must be determined by its relationship to other rates and not from

the examination of the absolute benefits or disabilities involved. On class rates, in particular, it should be a matter of indifference whether one carload or a thousand are involved, unless it be frankly admitted that the larger centres and the larger shippers, in addition to the many other advantages accruing from their size alone, are also to receive preferred treatment in freight rates. Equally irrelevant is the assertion that the relatively small amount of monetary disadvantage involved will excuse the lack of distributing class rates at small stations. This presupposes that a line can be drawn to distinguish negligible from not-negligible disadvantages. This could only mean that the larger centres have some inherent right to more favorable rates.

The railways are not obliged to publish distributing or town tariff rates except where the Board has found that their failure to publish them has resulted in unjust discrimination. But even where discrimination has been found to exist the result has not always been the extended application of distributing rates. See Applications of Town of Simcoe for Town Tariff Rates, 10 J.O.R. & R. 500 and 17 J.O.R. & R. 327. The matter of extending the application of distributing rates has been left largely to the discretion of the railways, upon the assumption that their self-interest in this matter would coincide with the public interest. The historical conditions in both Eastern and Western Canada which led to the establishment of these lower class rates have thus been treated with a deference which is clearly unwarranted. Early conditions have been permitted to congeal into permanent advantages.

The chief objections to the dual class rate system, i.e. the use of both standard and distributing rates within the same territory, are the following:

- (a) The system tends to be inflexible in that the list of town tariff or distributing points is restricted. Often unnecessarily difficult and unjustifiable conditions are imposed on any town seeking to obtain the privilege of using distributing rates.
- (b) The distributing points have an advantage on all class

traffic and not merely on those commodities which move in considerable volume.

- (c) The system places difficulties in the way of the growth and industrial development of smaller centres while at the same time favoring the concentration of economic activity at the privileged points.

In summary, there are no persuasive reasons why this original difference in treatment should remain permanently incorporated into the rate structure. It adds to the disadvantages of the smaller centres and the shippers of small volume, which are already sufficiently great by reason of their weaker bargaining power and the differences between car-load and less-than-carload rates. All points should be entitled to the same level of class rates.

(2) Uniform Scale to be Maximum for Interterritorial Class Rates

At the present time the straight mileage class rate scales apply within Eastern and Western Canada but a different system of class rates is used for interterritorial traffic between Eastern and Western Canada. The latter rates consist of two factors, the Eastern factor being an "arbitrary" applying to Fort William which is the same for rates to and from in the area bounded by all stations Sudbury, Windsor and Montreal (known as rate groups A and B). The Western factor consists of the Fort William terminal rates, which are equivalent to the Prairie standard class rates less the 130 miles, which result from the Fort William-Winnipeg constructive mileage. The Eastern factor, which is different for each class, represents a considerable reduction on rates to Fort William from the rates that would apply if the Ontario-Quebec standard scale were used for actual distances.

The two factors in the class rates from Eastern Rate Groups A and B to Edmonton and Calgary are as follows:

Class:	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>10</u>
Eastern arbitrary to									
Fort William	168	139	114	91	69	65	53	53	53
Fort Wm. Terminal rate	380	316	253	191	171	152	108	91	90
Total rate	<u>548</u>	<u>455</u>	<u>367</u>	<u>282</u>	<u>240</u>	<u>217</u>	<u>161</u>	<u>144</u>	<u>143</u>

The effect of this method of rate construction on rates to Western Canadian points varies considerably from the rates that would be charged on the basis of through mileage. The advantage of the two-factor rate over a through mileage rate based on the Prairie standard scale is greatest at Winnipeg and decreases gradually as one moves westward until in western Saskatchewan and Alberta the advantage disappears. The positions of the lines of joining points that would have equal rates under the present system or by using through mileage on the Prairie standard scale are shown on the map in Appendix D for the first six classes. West of these lines the present system produces rates that are higher than Prairie standard scale for the same distance, or rates derived from a reasonable extension of that scale above its present limit of 2,200 miles. A distance of 900 miles for the Eastern rate groups to Fort William has been assumed in calculating through mileage rates.

The above comparison demonstrates the fact that since the organization of the present system of interterritorial class rates all class traffic between Eastern Canada and Alberta and British Columbia has actually been charged a higher level of rates than the maximum rates authorized for traffic within Western Canada, i.e. the Prairie Standard Class Rates. Insofar as Alberta and British Columbia are concerned no benefits are derived from the low Eastern arbitraries to Fort William and none from the deduction of 130 miles in the Fort William Terminal rates. Both these features in the interterritorial rates have been help up as compensating features for the long haul across the "bridge" territory from Sudbury to Winnipeg. This may be the case insofar as Manitoba and the eastern part of Saskatchewan are concerned. It can hardly be denied that the present system is distinctly prejudicial to Alberta.

The significance of the comparison of these two-factor rates with Prairie standard rates should not be overlooked since this comparison will show the present class rates in the most favorable light. A more adequate standard by which to judge the present East-West class rates would be to use the Western distributing or the Eastern town tariff scale for comparative purposes. If this were done the lines of equal rates would obviously

fall a considerable distance east of their position as shown in Appendix D.

The change in the rate structure to remove this disadvantage need not replace entirely the present basis of making interterritorial rates. The use of this basis could be continued, provided that the through rate on the new uniform class rate scale in all instances be used as a maximum. Moreover to adapt the uniform scale for inter-territorial use there would be no necessity to discard the present Eastern rate groups and calculate actual mileages from every station in Eastern Canada to Fort William. As assumed common mileage to Fort William or Armstrong from all Eastern rate groups A and B points of 900 miles has been used in the illustration in Appendix D and we suggest this distance might serve in the actual construction of rates on the new basis. This distance is a reasonable average of the distances from important Eastern points, since the actual distance to Fort William from Toronto is 811 miles, from Ottawa 874 miles and from Montreal 994 miles. This would not constitute any fundamental departure from the grouping system that has always applied to and from Eastern points in connection with rates to Western Canada. Rates to and from the present rate groups east of Montreal could be treated in similar fashion.

(3) Rates on International Traffic in Western Canada

The establishment of a uniform scale for class rates across Canada would relieve a further class rate grievance in Western Canada. This arises from the use of standard class rates for the Canadian part of the haul on class traffic between the United States and Western Canada. In spite of the volume of traffic which moves to and from the border gateways in Prairie territory, these points are not classed as distributing points, so that distributing class rates cannot be used except when published as commodity rates. This traffic is the only important traffic in Western Canada which still is charged standard class rates. It includes many articles essential to the Western economy, including agricultural implements, coal-mining machinery, oil-well drilling equipment and supplies

and other machinery and manufactured articles.

Appendix E indicates the difference between standard and distributing sixth class rates from the border gateways to certain Western cities. Sixth class rates were selected as these are the rates that apply on agricultural implements. While the adoption of a single uniform class rate scale near the level of the town tariff rates would alleviate this grievance the latter is sufficiently important to be removed regardless of the disposition of the dual system of class rates.

If the present distinction between standard and distributing rates were to be continued, then the border gateways at least should be declared distributing points, in the technical sense of the term.

B. Commodity Rates and Volume Discrimination

With regard to commodity rates the equalization principle would require, in the absence of conditions permitting exceptions, e.g. competition:

(a) General commodity mileage scales should be uniform in all regions for each commodity.

(b) Specific commodity rates should be based on formulae which should be uniform in all regions for like commodities.

(1) General Commodity Mileage Rates

The general commodity rates include those rates which are published in the form of mileage scales, or as point-to-point rates to or from all stations within a territory. The point-to-point rates themselves are usually based on a mileage scale, although the scale may not be published in the tariffs. General commodity rates may apply (a) between all stations in a given area, (b) from certain specified points of origin to all stations in a given area, or (c) to certain specified points from all stations in a given area.

At the present time commodity mileage scales in Western Canada and Eastern Canada are not uniform. For certain commodities the scales are approximately the same in both territories: e.g. logs for manufacture,

fertilizer, coal (Alberta and Eastern British Columbia). The Prairie territory scales are lower for potatoes, pulpwood for manufacture, coal (Saskatchewan), sand and gravel, building brick, drain tile. Eastern commodity scales that are lower include scrap iron and steel, lumber, common lime and cement. Some examples of commodity mileage scales are given in Appendix F.

By the equalization of general commodity rates, except where competitive or other conditions compel a departure from the standard pattern, the same level of rates would be available to shippers in all parts of the country. The method of attaining this objective in general, should be to adapt the lowest scale in effect as the new uniform scale on the assumption that this scale is one that has been satisfactory in the territory in which it has been used. As with other adjustments to be proposed in these Submissions, any net losses in revenue to the carriers should be made up by adjustment of the general rate level.

Present regional differences in commodity rates are numerous, yet the majority of these differences are purely historical in origin and even at the time when the rates were first published did not measure differences between regions by any scientific standard. It is probable that many of the regional differences in commodity rates could be traced to original differences in the regional class rates. These have been carried over to the commodity rate structure wherever commodity rates have been based on some percentage relationship to the class rates. The general levels of rates within different regions may also have an indirect influence on the commodity rate structure. If it has been assumed that regional costs are higher in one region than another, the commodity rates as well as the class rates may reflect that factor.

(2) Specific Commodity Rates

The establishing of a uniform level of specific non-competitive commodity rates will involve problems arising from the volume discrimination which underlies the whole theory of commodity rates. By volume discrimination is meant the familiar practice of charging lower rates for a

larger volume of traffic. This may be done in a number of ways:

(a) by assigning a commodity to a lower class in the classification, (b) by giving commodity rates in place of class rates on certain movements in place of class rates, (c) by giving a lower rate for a carload than for a less-than-carload shipment, (d) by giving lower rates for larger minimum carloads, (e) by giving lower commodity rates than normal commodity rates.

It is a commonplace occurrence in merchandising to charge lower prices on goods sold in larger volumes, and rates established in any of the ways just described represent the same practice in the selling of transportation services. The importance of overhead or fixed costs, excess capacity, and the impracticability of determining any exact relationship between particular rates and costs, make it in the railways' interest to encourage traffic of the type that can provide a large or consistent volume. Volume discrimination can be considered a form of pressure upon or inducement to shippers to avoid unnecessary waste in transportation service. More heavily loaded cars increase the efficiency of railway operations per unit of traffic. While this function of volume discrimination is of value, it is not to be taken as an end in itself. Operating efficiency must be realized within the limits of meeting the transportation requirements that exist. Unless a limit is set to the amount of volume discrimination permitted, it would be easy to slip into the position that an entirely different standard of reasonableness in rates applies to heavy movements of traffic than to light or occasional movements.

The establishment of non-competitive commodity rates on a uniform basis can be one means of setting a reasonable limit to the amount of volume discrimination in the rate structure. With regard to commodities that move on commodity mileage scales the adoption of uniform scales presents little practical difficulty. For specific commodity rates, however, it may be necessary to develop formulae for their construction where none at present exist. For many such rates formulae are already in use, although in general they apply only on a regional basis, as is now the case

with class rates. Thus, for example, the normal commodity rate for newsprint in Western Canada is considered to be 90 per cent of fifth class distributing rates. The mills at Pine Falls, Man., and Kenora, Ont., are not located at distributing centres, so that the rate in the absence of the normal rate would be fifth class standard rate. New mills established on the Prairie could be expected to receive rates made on the same basis. Similar formulae are used for a number of other commodity rates--the general type most frequently used in Western Canada being the substitution of distributing rates for standard class rates.

Uniformity in non-competitive commodity rates, as already pointed out, does not involve the extension of commodity rates to all possible movements of traffic. The extent to which the equalization will apply will depend on the nature of the commodity and of the movement, but some relatively clear-cut distinctions can be mentioned:

(a) On primary products, whether of agriculture, forests, or fisheries, mines, etc., commodity rates should be uniform from all producing areas. For products of agriculture where production is uniformly dispersed over wide areas, commodity mileage rates offer the best solution. Certain products of agriculture, e.g. sugar beets, are produced in limited and clearly-defined areas and rates covering points outside such areas are naturally not required. For products of forests, mines and fisheries, it may be sufficient to maintain normal commodity rates only from actual mills, mines and shipping points, subject to the right of new shipping points to receive the same basis of rates. Rates covering processing-in-transit are similarly required only to and from processing points.

(b) On semi-manufactured and fully manufactured commodities, commodity rates may be limited to and from actual points of manufacture, subject again to the right of bona fide manufacturers or processors of the same commodities to obtain the same basis of rates.

The equalization principle applied to commodity rates in this fashion will preserve those distinctions in rates which do not involve

regional discrimination or favorable treatment on account of volume alone. The small shipper should not be denied the equality of treatment to which he is entitled. If lower commodity rates were given to some shippers solely because of the volume of traffic which they provide the railways, certain undesirable consequences would follow. If the small shipper, whose volume is not sufficient in the railways' opinion to warrant the lower rate, is charged the higher rate, it must be because it is assumed that his traffic can afford to bear the higher rate. It is difficult to avoid the conclusion that if the small shippers' traffic will bear the higher rate, then the large shippers' traffic could bear the same rate equally well. If this were the case the railways might be in the position of giving up revenue unnecessarily. On the other hand, if it is considered that the large shippers' traffic can only move on the lower rate, the charging of a higher rate to smaller shippers would have even less justification.

(3) Carload and Less-than-carload Rates

Section 314 s.s. 3 of the Railway Act permits the charging of lower rates for carload than for less-than-carload shipments. This is not exclusively a matter of volume since the responsibility of loading carload shipments rests with the shipper, whereas less-than-carload shipments may be delivered to the railway freight sheds to be loaded by the railways. There is a difference in service performed. The Interstate Commerce Commission has even gone so far as to rest the distinction between carload and less-than-carload rates solely upon the difference in cost of service. See In re Container Service 173 I.C.C. 377. Nevertheless it is difficult to escape the conclusion that volume is an important factor in this distinction, although it is significant that the Commission should take such an extreme position, if only to avoid having to recognize any preferential treatment being given for volume alone. As a method of encouraging shippers to use railroad transportation in the most economical manner, the distinction between carload and less-than-carload rates would have to be maintained under any plan of equalization.

This is not to say that the extent of the difficulties in rates at present is necessarily fair and reasonable in all cases.

(4) Rate Differentials Based on Different Carload Minima

This type of volume discrimination is different only in degree from the distinction between less-than-carload and carload shipments. It has been customary for the railroads to publish lower rates for larger carload minima in some cases. Apart from cases compelled by competitive conditions this practice could create a preferred position for the larger shippers.

The Interstate Commerce Commission has taken a critical attitude toward varying minima and in several decisions has stated that this type of rate-making should not be encouraged, although no outright prohibition has ever been declared. Nevertheless, doubt in the mind of the Commission as to the propriety of this practice is evident in numerous decisions. See Mathieson Alkali Works v. Louisville and Nashville R. Co. 155 I.C.C. 784.

A similar issue is presented in the case of trainload rates, arising usually in connection with bulk commodities, such as petroleum, coal and ore. Here the position of the Board of Transport Commissioners in refusing to consider larger minimum units than carloads would appear to be in the public interest. Rates varying with carload minima and rates for units larger than carloads confer advantages upon the larger shipper, and if there are sufficiently compelling reasons for lowering rates based on the factor of what the traffic will bear, this should be done in a manner that will not penalize the small shipper but rather will enable him to participate on equal terms.

On certain commodities, owing to the nature of the commodity or the minimum scale of operations e.g. coal, ore and bulky commodities, differences in carload minima may involve no hardship to shippers, since few if any may have any difficulty in making up the highest minimum loads. On general merchandise and manufactured articles, however, varying carload minima may involve an unreasonable advantage to larger shippers or larger cities. For this reason the practice should be confined to cases where all shippers have a reasonable chance of using the lower rates.

IV COMPETITION AND THE RATE STRUCTUREA. Competition as a Factor in the Level of Class Rates in Canada

It has frequently been claimed that the lower class rate levels in Eastern Canada, both for standard and town tariff rates, are the result of competitive conditions in that area. This claim has been used on different occasions as an argument against the practicability of class rate equalization. In this section it is proposed to outline the origin of Eastern class rates and to note the extent to which they reflect competitive conditions, past or present.

The present standard class rates appear to be direct descendants of the original maximum class rates which the railroads were required to publish in compliance with the Railway Act. The maximum rates were set at a high level in the first place by the railroads to allow themselves considerable leeway in the making of other rates. This point is brought out by Professor S. J. McLean in his discussion of the system of rate regulation in Canada prior to the formation of the Board of Railway Commissioners:

"The policy of the Railway Act with reference to the regulation of rates proceeds from the fixing of maxima. These maxima are fixed so high that the traffic will not bear them. The class rates enforced by the companies are within these maxima. The fact that the class rates so imposed by the companies are within the limits of the maxima approved by the Governor in Council is considered by the railway companies as an argument in favour of their reasonableness. In many cases the traffic will not stand the established class rates, and concessions have been made by adopting commodity tariffs which take specified commodities out of the official classification. The granting of these commodity rates has not proceeded upon any definite principle. Sometimes they have been granted to meet American competition. In other cases they have been granted because of urgent representations that the traffic will not bear the established class rates. But where such concessions have been made it has required a considerable amount of pressure on the part of the shippers. And the ultimate determination as to whether the rates should or should not be granted has rested with the railway--one of the parties to the rate contract." *

In the history of the standard class rates given by R.A.C. Henry and Associates in "Railway Freight Rates in Canada", no indication is

* (Sess. Papers: Vol. XXXVI, 1902 No. 20A, - p. 65)

given that the Eastern standard class rates were even decreased for any reason after 1884 until the rate reductions of 1921. This is illustrated in Appendix A of this Submission which is based on data obtained from the foregoing work. It will be noted that the standard first class rate for 200 miles remained at 46 cents from January 1, 1884 until March 15, 1918 when it was increased to 53 cents. It is therefore difficult to discover the basis for the claim that Eastern standard class rates have been depressed because of competition. In fact, their origin as maximum rates offers an explanation of the relatively limited extent to which they have been used since their establishment.

The differences between Eastern town tariffs and Western distributing rates are considerably greater than those between the standard rates in the two territories. Apart from seventh to tenth class rates which are on the whole slightly lower in the West, the differences in favor of the Eastern scale increase rapidly with distance as will be seen in Appendix C, which shows the differences between the rates for distances up to 600 miles.

As far as can be ascertained the Eastern town tariffs resulted from early competition between the Grand Trunk and Great Western Railroads in Western Ontario. As far back as 1874 the town tariffs applied from eight cities and towns where these lines were competing. See Application of the Town of Simcoe (1920) 10 J.O.R. & R. 500 at 501. The first standardization of town tariffs in Ontario-Quebec territory went into effect on September 2, 1891, when a uniform scale of rates for distances up to 400 miles was adopted. The method that was used in constructing this scale is of interest. Standard class rates then in effect were used but applied for greater distances. The "shrinkage" in mileage on the town tariffs averaged one-quarter. Thus the town tariff rates for 100 miles was equivalent to the Standard rates for 75 miles, and for 400 miles was equivalent to Standard rates for 300 miles. In other words, the constructive mileage varied with the distance to preserve essentially the same tapering as in the Standard Scale.

The reorganization of the town tariff rates that resulted from the

Board's decision in the International Rates Case, June 6, 1907,^{*} had its origin in complaints over the fact that rates from United States points at the Detroit, Port Huron and the Niagara gateways to Montreal were lower than from intermediate Canadian points. The new schedule of town tariff rates adopted, known as Schedule A, was constructed with rates from American border points as maxima for Canadian intermediate points. The level of rates adopted was determined by certain key rates, viz., first class rates of 58 cents from Detroit to Montreal, 48 cents from Ft. Erie to Montreal and 36 cents from Detroit to Toronto. The controlling competitive factor in the establishment of Schedule A rates was the Detroit-Montreal rate which the Grand Trunk had made equal to the Detroit-New York rate in order to attract American traffic to its lines. The town tariffs were revised upward in the Eastern Rates Case, 1916, 6 J.O.R. & R. 133 but since then have received only the same horizontal increases and decreases as the standard class rates.

While it is true therefore that competition influenced the original level of the town tariffs, it is important to note the particular type of competition and effect which it had on the rates. The competition was compelling only in the sense that the Board itself prescribed the Schedule A rates in International Rates Case, 1907. As was clearly established in that Case, the Canadian railroads had been able to maintain higher rates to and from intermediate points for many years in spite of the existence of competition at Detroit. The lower level of rates within Southern Ontario was brought about not by the pressure of competition but by the Board's decision to remove the long-and-short-haul discrimination that existed in these rates.

There are several reasons why the contention that Eastern town tariffs are depressed by competition should be carefully examined:

(1) The original competition between Grand Trunk and Great Western Railroads which initiated the town tariff rates ended with the absorption of the Great Western into the Grand Trunk System in 1882.

* Annual Report of Board of Railway Commissioners, 1908. Sessional Paper 20c Volume 43, pages 19-21.

(2) After the establishment of the Schedule A rates in 1907 no subsequent reduction was ever made in town tariff rates to meet competition from American rates based on American tariffs and classifications, and in fact the level of American class rates has been for some years considerably higher than the level of town tariff rates.

(3) Town tariff rates within Ontario and Quebec were established as normal rather than as competitive rates. Paragraph (d) of the Board's Order No. 3258, International Rates Case (1907), supra, reads as follows:

"(d) That from points competitive with the lake and river lines the companies may publish from and to such competitive points, during the season of navigation, such commodity rates as may be necessary to meet the competition of the water carriers, and shall also publish from Toronto to Hamilton to Ottawa and Montreal, and intermediate points, competitive class tariffs on the basis now existing, but not to exceed the mileage rates referred to in the said clause 'a'."

The rates referred to in clause "a" are the Schedule A rates.

It is apparent that water competition then as now was met by the railroads by the publication of competitive rates. Significantly, the town tariffs were not classed as competitive rates at the time of the 15 percent increase in competitive rates, September 15, 1948.

(4) The extension of Schedule A rates to interior points not subject to water competition is further evidence of the intention to prescribe a uniform pattern of rates throughout Southern Ontario.

(5) Schedule A was put in effect prior to the existence of motor truck competition, so that this type of competition could not have influenced the original level of rates.

(6) Water competition in Eastern Canada was met largely by the publication of summer rates. Package freight rates on the Great Lakes and St. Lawrence have been under the Board's jurisdiction since the coming into effect of the Transport Act in 1938, but there had been in effect prior to that date a system of differentials adhered to by both rail and water carriers. In the 21 Percent Case (1948) 38 J.O.R. & R. 1 the Lake Freight Association applied to the Board for an increase in rates sufficient to maintain rail-water differentials, even though this meant a greater percentage increase in water rates than in rail rates.

Complaints regarding differences between Eastern town tariffs and Western distributing rates have been made to the Board on many occasions.[★] On each of these occasions the Board has ascribed the differences to competition. In the Western Rates Case, Drayton, C.C. said at p. 137:

"The Board's action in this case (the International Rates Case) did not turn one way or the other on the question of the companies' financial standing, but was to remove and did remove admitted discriminations, the result of such discrimination being that the Western American shipper could use the Canadian lines at a proportionately much lower rate than the Canadian shipper could. The effect of the Order was merely to put the Canadian shipper on an equal footing relatively, so far as reasonably could be done, having regard to the different classifications obtaining in the different countries.....

"....In the decision, the Detroit rates were made the maxima easterly, in so far as the differences between the American and Canadian Freight Classifications permitted.

"The Detroit rate itself had been worked out as a result of the competition between American rail carriers and water carriers. The result of this is that the effect of the competition between American rail carriers and water carriers, which brought about the Detroit rate, is carried through the revised "town" tariff scale as directed in the decision of the Board."

In the General Rates Investigation 1927, McKeown, C.C. said at page 137:

"....the difference in standard mileage between eastern and western Canada, has been so often thoroughly explained, and reasons therefor developed that it is sufficient to say that under conditions as they exist, no other course seems possible to follow. One cannot ignore the existence of water and other competition which lies at the foundation of this distinction and which has been completely developed in many judgments of the Board."

Given the origin of the standard class rates in Eastern Canada as maximum class rates, prior to the publishing of tariffs in Western Canada, it is difficult to agree in the views expressed in the above judgment as to reasons for the differences in standard class rates. As already pointed out, the original level of Prairie standard rates was chosen so as to allow for the light traffic density in the early years. The level of Prairie standard rates was never held to be the normal level at which

★ See Western Rates Case (1914) 17 C.R.C. 123 at 159, 166 ff.; Freight Tolls, 1922, 12 J.O.R. & R. 61 at 72; General Freight Rate Investigation, 1927, 17 J.O.R. & R. 131 at 136.

Eastern standard rates would have been but for the existence of competition.

There can be general agreement on the existence of the competitive factor in the Eastern town tariffs at the time of their construction, but this cannot be a sufficient reason for departures from the equalization principle in the town tariff rates today. While competition has always been present in some form in Eastern Canada, it is clear that the competition which influenced the Schedule A rates in 1907 is either non-existent, neutralized, or met through the publication of specific commodity rates today. The town tariffs for many years have functioned as normal class rates in Eastern Canada, and their level has not been varied to meet changing competitive conditions. The considerable difference between Prairie distributing and Eastern town tariff rates are caused, not by current competitive conditions, but by the numerous factors operative at the time of their respective origins. It is submitted that in no case would any adequate standard of regional differences in rates warrant the differences between the two scales which now exist.

The importance of this problem should not be underestimated. At the present time competitive conditions vary widely throughout the country. Geographic reasons account for some of this variance but other factors have intruded. The Government of Canada has made large investments in canals and harbor improvements in Eastern Canada. These have created competitive conditions which have been highly advantageous to that area in so far as transportation rates are concerned. It is true that Western Canada derives benefit from the canal system in the carriage of grain, but the extent of this benefit should not be exaggerated. In the first place a considerable part of the Alberta crop under normal conditions will move via Vancouver. In the second place it should be recalled that the building of canals was a measure taken, not primarily to create a traffic outlet where none previously existed, but rather to create a competitive outlet through all-Canadian territory and via Canadian ports. Alternative routes via the Erie Canal and Hudson River to New York or via rail from Buffalo to New York or

other United States ports on the Atlantic have been available. The Canadian routes have been competitive with those via American ports. The successive investments in canals were motivated in large part by the desire to retain Canadian traffic for Canadian routes and capture United States traffic from competing United States routes to the Atlantic Seaboard.

Looked upon in this light it becomes a debatable point whether the benefits of this policy have been equally divided between East and West. Against the benefits accruing to the West must be set the relative disadvantages produced by the attraction on industry and commerce exerted by a low competitive rate level in the Great Lakes area. It is possible that competitive conditions have reduced the amount of the return on this investment in rail transportation facilities in this area. But it is also possible that favorable competitive rates have encouraged the concentration of industry in this area, and the greater density of traffic thus created may have offset the effect of reductions in rates on the carriers' returns. For this reason, the level of competitive rates within Central Canada is a matter of more than local concern, particularly since the results of Federal Government policy have intensified the competition. It is important that any unwarranted difference in competitive rates between regions should be removed.

B. The Control of Competitive Rates

Competitive rates and tariffs are dealt with in three different sections of the Railway Act. Section 314 (5) contains the long-and-short haul rule. Exceptions to this rule are permitted if "the Board is satisfied that, owing to competition, it is expedient to allow such toll". Subsection 6, immediately following, provides that "the Board may declare that any places are competitive points within the meaning of this Act".

Section 328 provides the railway tariffs shall be divided into three classes: standard, special and competitive.

Section 329 (4) states what the competitive tariffs are to specify:

"The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any specified point or points which the Board may deem or have declared to be competitive points not subject to the long-and-short-haul clause under the provisions of this Act."

Section 332 provides for the filing of competitive tariffs on short notice "to meet the exigencies of competition".

"Competitive tariffs shall be filed by the company with the Board and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect: Provided that where it may be necessary to meet the exigencies of competition, or as the Board may deem expedient, the Board may make rules and regulations governing the filing of publication of such tariffs, and may provide that any such tariffs may be acted upon and put in operation immediately upon the issue thereof by the company, before they have been filed with the Board, or may in any case make a special order or direction allowing any such tariff to go into effect as the Board shall appoint."

It will be noted that Section 329 (4) of the Act appears to consider competitive rates almost wholly in connection with the long-and-short-haul rule. Competitive tariffs, according to the language of this Subsection, would appear to be authorized only between points which the Board has declared competitive points not subject to the long-and-short-haul clause. In this respect the legislation has been rendered out-of-date to some extent by motor competition, since apparently the statute has envisaged all competition as occurring at specific points in the manner of rail or water competition over fixed routes. The pervasive and blanketing effect of motor competition over an area gives less occasion than other forms of competition for making exceptions to the long-and-short-haul rule by the railroads.

The nature of competition in transportation makes it obvious that the control of competitive rates cannot be achieved by arbitrary methods. Administrative rules and procedures must remain subject to adaptation or modification, at the discretion of the regulatory authority. Statutory provisions regarding competitive rates should lay down the basic principles without binding the regulatory authority too closely to a rigid procedure. The achievement of the broader objectives of the regulation of competitive rates is of greater moment than the adherence to a detailed and inflexible

system of rules.

Up to the present time the regulation of competitive freight rates in Canada has been largely concerned with the statutory prohibition against "unjust discrimination". In Nanaimo Board of Trade v. Canadian Pacific Ry. 8 J.O.R. & R. 105 at 108 the Board said:

"The railway company's untrammelled right to meet or disregard competition is subject to this qualification--that after having elected to meet competition at any point on its system in a district where similar operating and traffic conditions obtain, the competitive rate should be extended to other points in the common district."

In general, only where "unjust discrimination" results does the Board feel called upon to intervene in matters concerning competitive rates. In Canadian Freight Association v. Colonial Steamships (1939) 29 J.O.R. & R. 423, the Board disallowed a new rate on the ground that it was lower than competitively necessary, but in this case both parties were under the jurisdiction of the Board.

Apart from "unjust discrimination" there are other problems involved in competitive rates which call for a close and continuous supervision on the part of the regulatory authority. As to these problems the present statute offers little guidance to the Board.

The first class of such problems comprises those arising from changes in competitive conditions. Rate competition may decrease or disappear altogether. This may be either due to the decline or disappearance of the competing agency or to the desire of all carriers to avoid ruinous rate-cutting. In either event competitive rates should not remain at unnecessarily low levels. The differences between competitive and non-competitive rates should closely reflect the effective competition.

The second class includes problems connected with the status of a competitive rate. In some cases the Board has established rates reflecting competitive conditions existing at the date of its judgment, and in other cases competitive rates have been made by the carriers themselves; in both cases the rates in the course of time may have come to be regarded as normal rates for the traffic concerned. Competitive rates

having this status should be recognized as normal rates and extended to other regions in accordance with the equalization principle advocated in this Submission.

A third class of problem involving competitive rates is the one which concerns the relationship of competitive rates to the rest of the rate structure. For example, the compensatory nature of a specific competitive rate should concern the Board wherever there may be reason to believe that the rate is unduly low, either from its effect on the carrier's revenue position or on the position of the competing agency; regional differences in competitive conditions, because of the advantages accruing to trade and industry served by competing transportation agencies, should not be accentuated by a level of competitive rates in one area which is not closely related to current competitive conditions; additional financial need of the carriers should be met in the first place by increases in competitive rates to the maximum extent possible so as to minimize the possibility of non-competitive traffic subsidizing competitive traffic.

We are not concerned with the specific procedure which the Board should adopt in dealing with competitive rates. If the Board's responsibilities in this matter are widened to deal with problems of the type just outlined, practical considerations may govern the details of procedure required of the carriers in the making of competitive rates. When prompt action in the publication of new competitive rates is necessary, it might be inexpedient in all cases to require the rates to be published a certain period in advance of the date they are to become effective. This does not mean that the rate should not be carefully examined by the Board and be subject to the same general requirements governing all competitive rates. Such a concession should be to provide the railroads sufficient freedom to meet competition effectively under urgent conditions.

As important as the initial study by the Board of a new competitive rate is the continuous supervision of all competitive rates. That should be a definite responsibility of the Board imposed upon it by statute. The Board must be in the closest touch with all developments affecting

competitive rates, such as: the extent of actual competition, the relationship between competitive and non-competitive rate levels, the compensatory nature of competitive rates, the extent to which competitive rates reflect current competitive conditions, the volume of traffic carried on competitive rates in different regions and its proportion to total traffic, and all other matters relating to competitive conditions. The information required by Rule 17 (1) of the Board's Tariff Circular No. 1 regarding new competitive rates is as follows:

"The filing advice covering the filing of such schedule shall be accompanied by a clear statement of the reasons for such publication, the name of the party for whom the rate was made, the rate and the name of the carrier with whom competing, the rate which would otherwise apply in the absence of such publication, and such other information as will satisfy the Board as to the bona fides of the action taken."

This information alone would be insufficient for the Board to determine at a later date the adequacy of a competitive rate. For this purpose only a continuous review of the competitive rate structure would suffice.

A change in the regulation of competitive rates toward a closer supervision of competitive rate levels is not urged for the purpose of taking from the railroads the initiative in competitive rates and transferring such initiative to the Board. But it does prescribe the further condition which a competitive rate should fulfil, both at the date of its publication and during the period which it is in effect.

Such statutory changes as would be involved by this approach to the competitive rate problem will be outlined in accompanying submissions on Regulatory Legislation and on the long-and-short Haul Rule.

V THE DISTANCE FACTOR IN THE RATE STRUCTURE

A. The Distance Factor between Eastern and Western Canada

The distance from Edmonton to Toronto is almost exactly 2,000 miles, and from no point in Alberta to Toronto or other industrial cities in Southern Ontario and Quebec is the distance less than 1,800 miles. In view of the volume of Alberta traffic that moves over these distances, the manner in which rates progress with distance is of fundamental importance to Alberta. Within Central Canada hauls of over 600 miles are a comparatively small part of the total. Beyond that distance the rate of progression is of purely academic interest. It is on traffic moving between Eastern and Western Canada that the longest hauls occur.

Appendix G gives a comparison of the rates of tapering in the principal class rate scales using the first class rate for 1,000 miles as the base and expressing other mileages as percentages of that base. To indicate the relative level of the different scales the actual rates for 1,000 miles are also shown. The tapering in the class rates between Eastern and Western Canada, although these rates are not on a straight mileage basis, is also given. It is significant that in spite of the comparatively low Eastern arbitrary and the deduction of 130 miles between Fort William and Winnipeg that the tapering on this scale is less than on the Prairie standard scale for similar distances. This has the effect of exaggerating the distance factor in the rate, e.g. at 1,000 miles the present two-factor rate is 76 cents less than the Prairie standard scale, but at 2,000 miles is 37 cents greater. As pointed out earlier in this Submission, this exaggeration of the distance factor is minimized if the Prairie standard scale be used for comparative purposes. A comparison more to the point would be a comparison of the Prairie distributing scale and the East-West class rates. The Prairie distributing rates, being 85 per cent of Prairie standard rates, would have a rate of tapering for distance the same as the Prairie standard rates.

It might be objected that on traffic moving between Central Canada and Alberta the distance factor is of equal concern to both shipper

and consignee and that the burden is shared on that account. This objection would overlook the economic context within which these rates operate. On the bulk of the westbound merchandise traffic there are few occasions where freight absorption is forced upon the Eastern manufacturer in order to meet competition from closer sources of supply. Normally such prices in Alberta will be factory prices plus freight from Eastern Canada. On movements of traffic eastbound, such as agricultural products, lumber, etc., Alberta products are often similar in type to those of Saskatchewan and Manitoba and must absorb the difference in rates to compete in the Eastern market. It is the Alberta shipper or consignee who is most directly concerned with this problem.

The proper degree of tapering is a practical matter and admittedly it might vary with particular circumstances. But so far as the class rates between Eastern and Western Canada are concerned in no case should the effective rate of tapering for distance in these rates produce higher rates than would apply if a uniform mileage scale were used throughout. The rate of tapering for distance in the Prairie standard or distributing scales is the one best adapted to meeting the requirements of long-haul traffic. It is submitted that such rate of tapering should be taken as the model for the tapering of the uniform class rate scale advocated in this Submission.

B. Horizontal Percentage Increases

Recent applications of the railroads for horizontal percentage increases have directed attention to the adverse effects which this method of increasing railroad revenues has on those areas where the general rate level is already higher and on all long-haul traffic. The horizontal percentage increases have accentuated existing inequalities in the general rate levels and have increased the rate differentials between long hauls and short hauls, and between interline hauls paying combination rates and single line hauls.

In any general increase in rates a percentage formula may have to be used as a basis if only in the interests of convenience and expediency. But there is a vast difference in the impact of a straight percentage

increase in which substantial modifications have been made to avoid penalizing long-haul traffic and basic commodities.

The form of the recent applications of United States railroads to the Interstate Commerce Commission for increased rates offers a striking contrast to the applications of the Canadian railroads to the Board of Transport Commissioners in the 30 Percent Case and 20 Percent Case. Considering the greater size and complexity of the United States transportation system the argument in favor of horizontal percentage increases on the ground of expediency might appear to have greater force in that country than in Canada. Nevertheless it is some years since increases of this type have been approved by the Interstate Commerce Commission.

In the 15 Percent Case, 1931, 178 I.C.C. 539, the Commission rejected the application of the railroads for a horizontal percentage increase of 15 percent in favor of a system of flat increases in cents per hundred weight and dollars per car on specified commodities. In the case of the general flat increases per hundred weight on commodities a maximum of 10 percent was imposed.

In Emergency Freight Charges, 1935, 208 I.C.C. 4, flat increases from 1 to 11 cents were applied on less than carload traffic, subject to a maximum of 10 percent, and increases of 7 percent were applied to carload traffic subject to a maximum of 5 cents per cwt. These increases illustrate the fact that a percentage maximum to a general flat increase can be used as a protection for short haul traffic, while the opposite case of a flat maximum to a general percentage increase serves as a protection for long haul traffic.

In the wartime and post-war increase cases in the United States beginning in 1942, the impact of horizontal increases on a growing number of commodity rates has been reduced by imposing ceilings which in effect transform the increases into flat amounts beyond a certain distance, which varies with each commodity. The extent to which this refinement in technique has progressed beyond the stage of a straight percentage increase on all traffic is illustrated in Appendix H, which lists the maximum increases prescribed for numerous commodities in two successive applications. It

should be noted that the two increases shown were applied to all rates at one stage or another, so that the effect of the maximum increases in holding down rates on the longer hauls has been considerable.

Many of the limitations to percentage increases in the United States were originally proposed by the railroads themselves, but the attitude of the Interstate Commerce Commission itself in earlier applications has probably been an important factor in the trend away from unmodified percentage increases. The attention of the Commission is directed to the most recent decision of the Interstate Commerce Commission of August 2, 1949, in the case of Ex Parte 168.*

One example of the manner in which the establishment of maximum increases may serve to mitigate the heavy impact of a percentage increase is in commodity rates made up of the combination of two local rates. The recent Tariffs of Increased Rates in the United States have provided that in the case of combination rates the percentage increase is to be applied to both factors, except that the total increase must not exceed the maximum or specific increase, if any, that has been provided for the commodity in question. See, for example, Rule 7, page 31, Tariff of Increased Rates and Charges No. X-166-C. The manner in which this would apply in Canada can be illustrated by assuming that in the 21 Per Cent Case, brick rates in Canada had been subject to a maximum increase of $1\frac{1}{2}$ cents per cwt., as was prescribed in the United States in the Ex Parte X-162-A increases where the general increase authorized was 20 percent. On a movement of brick from Redcliff, Alberta, on the Canadian Pacific to Hanna, Alberta, on the Canadian National, prior to the 21 percent increase in April 1948, the effective combination rate consisted of the local rate from Redcliff to Drumheller of $10\frac{1}{2}$ cents per cwt. and the local rate from Drumheller to Hanna of 8 cents per cwt. less deductions of 1 cent per cwt. on each factor, making a total rate of $16\frac{1}{2}$ cents per cwt. The 21 percent increase raised the first factor by $2\frac{1}{2}$ cents and the second factor by $1\frac{1}{2}$ cents for the total increase of 4 cents to bring the through rate to $20\frac{1}{2}$ cents. However,

* At time of writing only the mimeographed judgment was available. The findings of the Commission appear at sheets 100-104.

had a maximum increase of $1\frac{1}{2}$ cents per cwt. been prescribed on brick, the combination rate could have been increased only to 18 cents. In the absence both of any order prescribing a thorough-going system of interline rates, and of any limitation on percentage increases, the disadvantages of points affected by combination rates on interline traffic have been increased. In this case the single factor rate for the total mileage would have increased from $12\frac{1}{2}$ to 14 cents, instead of to 15 cents as it did in the absence of this maximum.

It is important that the national policy of facilitating the interchange of goods between all parts of the country be not undermined by raising rates by the convenient expedient of a horizontal percentage increase without regard to the distance factor and to the particular features of the different commodities hauled and the manner and extent of the increase which they should properly be asked to bear.

VI SUMMARY OF RECOMMENDATIONS AND CONCLUSION

The Province of Alberta submits that an essential step toward the removal of freight rate grievances in the different parts of Canada is the prescribing of the general form which the rate structure should have, whether this be done by statutory or other means. If this form can be made explicit the regulatory authority will have a clear indication of national policy to guide it. At the present time such direction is lacking, leaving the Board with little alternative but the acceptance of the rate structure as it is, except in cases where personal discrimination can be established.

It is not necessary to convert the Board into a national planning body to achieve this objective. The declaration of a policy, such as that of rate equalization as advocated in this Submission, would have the advantage of leaving to the Board the administration of the statute, without imposing upon it problems involving broader issues of national policy.

The equalization principle has the advantage of eliminating the multitude of regional differences in rates for which there are no valid grounds based on contemporary conditions. Equalization also would give full weight to the organic nature of the transportation system and thus avoid rate disparities which would give unwarranted advantages to those parts of the system where traffic density is greatest. These advantages tend to create new advantages of the same order so that the effect becomes cumulative. Equalization will prevent the freight rate structure from becoming a force adding to the already strong economic and institutional forces operating in the direction of centralization.

Regional differences in transportation conditions which are not fully accounted for by system conditions or by the effects of national investments in transportation facilities within and for the benefit of particular regions, may still be recognized within the limits of the equalization principle and without abandoning the basic concept of regional discrimination.

In conclusion, it is submitted that a rate structure built along the lines of the principle offers

"the only means of dealing equitably with all parts of Canada"

and is the method

"best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade." ★

Our recommendations regarding changes in the rate structure and in rate regulation are given below. Recommendations involving changes in the Railway Act and other statutes will be put forward in an accompanying Submission.

Changes in the Rate Structure

- (1) The various territorial class rate scales should be replaced by a uniform class rate scale to apply in all territories.★★
- (2) The uniform scale should apply as a maximum on present inter-territorial class rates.
- (3) The new uniform scale should be established at the approximate level of the Eastern town tariff scale.
- (4) The uniform scale would automatically apply on Canadian factor of international class rates between United States and Western Canada.
- (5) Commodity mileage rates within the different territories should be equalized initially at the level of the lowest scale now in effect.
- (6) Formulae for non-competitive commodity rates should be the same for all territories.
- (7) Lower rates for higher minimum carloads should either be extended in more uniform fashion or their use be restricted to meet exceptional circumstances.

★ Order in Council P.C. 886, cited in 33 C.R.C. 127 at 131.

★★ Our recommendations involve no change in the Maritime Freight Rates Act.

- (8) Current competitive conditions may sanction departures from the above equalization requirements, subject to meeting the requirements for the establishment of competitive rates.

Changes in Regulatory Policy

- (1) The principle of equalization should be recognized as the basic determinant of the form of the new rate structure.
- (2) Cost of service may function as one factor among others in determining the general level of rates over the system, the classification of commodities and the minimum level for specific competitive rates.
- (3) Regional discrimination would be prohibited. The prohibition would be against departures from the equalization principle which cannot be justified by current competitive conditions, considerations of national policy, and considerations warranting the establishment of commodity rates.
- (4) Question of fact in border-line cases concerning the right of a shipper or consignee for non-competitive commodity rates should be determined by the Board.
- (5) Competitive rates should be examined on first application and be subject to continuous review. Obsolete competitive rates should be raised or be made the criterion of normal commodity rates.
- (6) General competitive conditions should be taken into account in any changes in competitive rates or in general rate levels.
- (7) Horizontal percentage increases should be modified by the application of maxima to prevent penalization of long hauls and low-valued traffic.

CHANGES IN TOWN TARIFF AND DISTRIBUTING RATE LEVELS

Measured by First Class Rates in Cents per Cwt.
Distance of 200 Miles

Date	Maritime	Ontario- Quebec	Manitoba	Alta.- Sask. Local to B.C.	Pacific	Remarks
Sept. 2, 1891		40	-	-	-	First uniform "Town Tariff" Scales in Ont.-Quebec Territory.
Mar. 1, 1898	34	-	-	-	-	First uniform "Town Tariff" Scales in Maritime Territory.
July 17, 1905	36	-	-	-	-	Maritime Scale increased to standard class rate scale.
Nov. 25, 1907	-	-	56	61	68	Distributing Rates published in Prairies.
Jan. 1, 1908	-	36	-	-	-	Schedule A established in Ontario-Quebec Territory.
May 28, 1913	x	-	-	-	-	" " " Maritime Territory.
Sept. 1, 1914	-	-	59	59	77	Local Saskatchewan and Alberta rates and as well as rates to British Columbia equalized with Manitoba (Western Rates Case)--Pacific Scale standardized.
						Prairie
Dec. 1, 1916	38	38		59	77	Eastern Rates increased (Eastern Rates Case).
Mar. 15, 1918	43½	43½		68	85½	Increase of 15 percent in all territories except 10 percent in Pacific Territory.
Aug. 12, 1918	54½	54½		74	98	Increase of 25 percent in all territories. Western increases based on rates in effect prior to March 15, 1918.
Sept. 13, 1920	76½	76½		100	132	Increase of 40 percent in Eastern Rates--35 percent in Western Rates.
Jan. 1, 1921	73½	73½		96	127	Preceding increases reduced to 35 percent in East and 30 percent in West.
Dec. 1, 1921	68	68		89	119	Rates reduced to 25 percent over rates in effect prior to Sept. 13, 1920, in Eastern Canada and to 20 percent in Western Canada.
Aug. 1, 1922	-	-		-	107	Pacific Scale reduced.
July 1, 1927	54	68		89	107	Maritime Scale reduced 20 percent in compliance with Maritime Freight Rates Act.
Apr. 8, 1948	65	82		108	129	21 percent increase in all Territories.
July 1, 1949	-	-		-	108	Prairie Scale effective in Pacific Territory.

DIFFERENCES BETWEEN WESTERN DISTRIBUTING
AND EASTERN TOWN TARIFF RATES ★

Distance in Miles	Rate classes								
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>10</u>
10	0	0	0	0	0	0	0	0	0
20	-1	-2	-2	-2	0	-1	-3	-1	-2
30	-3	-4	-5	-6	-3	-3	0	-1	-3
40	-2	-3	-5	-7	-1	-3	0	-1	-3
50	-1	-2	-4	-5	0	-1	-1	-2	-2
60	-1	-1	-4	-8	-2	-3	-3	-1	-2
70	0	-3	-5	-6	-4	-3	-1	-3	-3
80	3	-2	-3	-6	-1	-1	-3	-5	-3
90	3	0	-4	-7	-2	-2	-5	-3	-5
100	8	4	-3	-6	2	-1	-3	-2	-4
110	3	0	-5	-8	0	-1	-3	-4	-4
120	9	7	1	-4	1	1	-3	-4	-1
130	9	4	0	-3	2	0	-4	-2	-2
140	13	10	1	1	3	0	-4	-2	-2
150	14	9	3	-3	3	0	-5	-4	-3
160	14	9	3	-3	3	0	-5	-4	-3
170	19	12	6	-3	5	1	-2	-2	-3
180	20	14	4	-1	6	-1	-4	-2	-4
190	20	14	4	-1	6	-1	-4	-2	-4
200	26	18	7	2	6	2	-4	0	-4
210	24	17	10	2	6	1	-4	0	-5
220	28	21	11	2	7	3	-2	0	-5
230	28	21	11	2	7	3	-2	0	-5
240	28	18	9	1	8	2	-4	-1	-5
250	29	20	10	4	9	4	-2	-1	-5
300	33	24	11	4	8	5	-3	-3	-4
350	44	32	19	10	16	9	3	0	-2
400	31	21	10	0	8	1	1	-2	-8
450	43	29	17	5	14	7	2	2	-5
500	36	24	10	-2	10	-1	-1	-4	-8
550	41	27	12	2	13	3	0	-2	-9
600	48	34	20	4	16	3	0	-2	-8

★ Minus sign indicates Western Distributing Rates lower than Eastern Town Tariffs. All differences are in cents per hundred weight. Town Tariff Rates are those from Toronto to points on the Canadian Pacific line between Toronto and Sault Ste. Marie.

COMPARISON OF PRESENT AND ALTERNATIVE
FIFTH CLASS RATES FROM CENTRAL CANADA TO ALBERTA POINTS

(1)	(2)	(3)	(4)	(5)	(6)
To	Miles from Toronto	Present Fifth Class Rate	Assumed Mileage for Through Rates ★	Rates Based on Prairie Standard Fifth Class★★	(5)-(3)★★★
Lloydminster	1858	221	1942	225	4
Vermilion	1898	227	1982	227	0
Medicine Hat	1886	221	1975	227	6
Vegreville	1956	232	2040	229	-3
Drumheller	1989	240	2073	231	-9
Edmonton	2001	240	2085	231	-9
Lethbridge	1987	232	2076	231	-1
Red Deer	2046	246	2130	232	-14
Calgary	2053	240	2142	232	-8
Wetaskiwin	2037	240	2126	232	-8
St. Paul	2121	250	2205	236	-14
Edson	2127	250	2211	236	-14
Lac la Biche	2137	276	2222	236	-40
Grande Prairie	2413	280	2497	245	-35
Dawson Creek	2501	283	2585	248	-35

★ Consists of a 900 mile arbitrary East of Fort William or Armstrong plus the actual mileage from these points to the specified Alberta centres.

★★ 5th Class Prairie Standard Rate applied to assumed mileage in column (4). Where distance is over 2200 miles the Prairie Scale has been extended by using same increments for subsequent mileage blocks.

★★★ Lines of equal rates are shown in Part 2 of this Appendix.

SIXTH CLASS RATES FROM BORDER GATEWAYS ★

A: Standard Mileage Rates

B: Distributing Rates

To		International Bdy., Ont. (Ranier, Minn.)	Emerson, Man. (Noyes, Minn.)	Northgate, Sask. (Northgate, N.D.)	North Portal, Sask. (Portal, N.D.)
Winnipeg	A	40	28		
	B	40	24		
Regina	A	93	71	40	47
	B	79	61	35	39
Saskatoon	A	109	91	62	69
	B	87	79	51	57
Medicine Hat	A		111		76
	B		93		65
Calgary	A	149	129	105	97
	B	123	109	87	82
Edmonton	A	142	126	102	102
	B	119	105	87	87

★ Sixth class rates apply on agricultural implements.

COMPARISON OF CERTAIN COMMODITY MILEAGE RATES

IN ONTARIO-QUEBEC AND PRAIRIE TERRITORIES

Rates in Cents per Cwt.

Miles Not Over	Scrap, Iron or Steel		Pulpwood for Manufacturing and Reshipment		Fertilizer		Livestock	
	Ontario-Quebec	Prairie	Ontario-Quebec	Prairie	Ontario-Quebec	Prairie	Horses, Mules, Sheep, Cattle & Swine	
25	8	6½	6½	4½	7½	7½	15	14
50	9½	9	7½	5½	9	9	20	21
75	12	11½	9	6	13	13	24	25
100	14	14	9½	6½	15	15	29	31
250	20	19	13	9½	21	21	48	44
500	31	31	19	14	31	31	63	62
750	36	42	25	18	41	41	87	77
1000	41	51	31	23	52	52	124	91

Miles Not Over	Building Sand, Gravel, Crushed Stone		Building Brick		Drain Tile		Cement Building Blocks		Common Lime	
	Ontario-Quebec	Prairie	Ontario-Quebec	Prairie	Ontario-Quebec	Prairie	Ontario-Quebec	Prairie	Ontario-Quebec	
25	5¾	4¾	9	6½	9	7½	9½	8½	8½	9
50	7	6½	11½	9	11½	9	12	11	11	11½
75	9	8	13	10½	13	11	15	14	13	15
100	10	8	15	10½	15	11	16	15	15	16
250	14	12	20	15	20	16	21	22	19	22
500	20	17	28	21	28	22	30	28	28	33
750	26	22	36	27	36	28	39	35	36	44
1000	32	28	45	33	45	35	48	42	44	53

Published as point to point rates.

COMPARISON OF CERTAIN COMMODITY MILEAGE RATES
IN ONTARIO-QUEBEC AND PRAIRIE TERRITORIES

Rates in Cents per Cwt.

Miles not over	Potatoes		Salt [†]		Asphalt & Asphalt Products [†]		Cement ^{‡‡}	
	Ontario- Quebec	Prairie	Ontario- Quebec	Prairie	Ontario- Quebec	Prairie	Ontario- Quebec	Prairie
25	11½	12	11½	9½	13	12	9½	9½
50	15	16	15	13	15	15	12	12
75	19	18	20	17	18	18	15	16
100	21	21	22	18	21	19	16	17
250	35	29	35	28	23	28	22	26
500	49	47	39	42	28	41	30	39
750	72	64	-	-	-	-	38	51
1000	96	77	-	-	-	-	47	61

Miles not over	Lumber and Forest Products		Coal ^{‡‡‡}			
	Ontario - Quebec	Prairie	Ontario-Quebec	Saskatchewan	Alberta and Eastern B. C.	
	General Scale	Constructive Scale	Anthracite	Bituminous		
25	11	11	150	135	125	135
50	13	11½	180	165	145	165
75	17	15	205	185	165	185
100	19	16	215	195	175	205
250	25	21	295	275	245	275
500	37	27	395	375	355	395
750	50	36	495	475	465	505
1000	58	43	595	575	545	595

[†] From points specified in the tariff.^{‡‡} Published as point-to-point rates.^{‡‡‡} Rates in cents per ton of 2000 lbs.

INDEX OF TAPERING OF PRINCIPAL CLASS RATES IN CANADA

(First Class Rate for 1000 miles = 100)

Mileage	Prairie Index	Scale Rate	Superior Index	Scale Rate	Ontario-Quebec Index	Rate	East-West Index	Rate [★]
100	24		30		24			
200	35		40		31			
300	45		48		40			
400	54		55		47			
500	63		63		54			
750	83		82		75			
1000	100	352	100	348	100	326	100	276
1250	115		117		124		122	
1500	130		134		149		154	
1750	137		152		173		178	
2000	145	511	168	587	197	642	199	548

[★] Mileages on Toronto to Edmonton main line used.

LIMITATIONS TO HORIZONTAL PERCENTAGE INCREASES INU.S. TARIFFS OF INCREASED RATES X-162-B AND X-166-C

(See Note at end of Table)

Tariff Item No.	Commodity Description	No. Articles Included in Each Item	Maximum Increases in cents per cwt.	
			X-162-B	X-166-C
145	Aluminum - Billets, Ingots, etc.	5	10	16
150	Aluminum - Angles, Bars, Shapes, etc.	40	12	16
151	Aluminum Cable	-	-	16
152	Ammonium Phosphate - crude	-	6	8
170	Asphalt, natural	-	6	10
180	Railway car or locomotive axles	-	10	16
200	Barytes	-	-	6
225	Benzol, tank cars	-	6	10
230	Berries, fresh or frozen fresh	-	13	-
235	Building blocks & slabs	6	1 $\frac{1}{2}$	3
240	Blocks, granite paving	-	-	3
245	Wooden boxes	-	10	20
250	Brick & tile - building blocks, etc.	30	1 $\frac{1}{2}$	3
260	Building Woodwork & Millwork - Can. or U.S. wood - doors, moulding, sashes, etc.	23	10	20
265	Butane, Propane & Liquified Pet. Gas	-	6	10
275	Cement	4	6	4
290	Cinders, clay or shale	-	15 \star	3
295	Clay & Shale	5	6	1 $\frac{1}{2}$
305	Coke, Coal Ashes & Cinders	4	15 \star	1 $\frac{1}{2}$
320	Unlined clay or shale conduit	-	1 $\frac{1}{2}$	3
325	Copper Bars, Cable, Pipe, etc.	57	-	16
345	Cotton, in bales, applied to lowest rate with highest C/L Min.	-	10	11
355	Cotton By-products	8	-	11
380	Granite Curbing	-	-	3

 \star Flat increase per ton.

Appendix H
Continued

Tariff Item No.	Commodity Description	No. Articles Included in Each Item	Maximum Increases in cents per cwt.	
			X-162-B	X-166-C
385	Cyanamid	-	6	8
395	Dolomite - crude - open cars	-	15 [★]	1½
400	" " closed cars	-	30 [★]	3
415	Fullers Earth - not spent	-	6	6
420	" " spent	-	15	1½
425	Excelsior, wood	-	-	14
435	Feldspar	-	-	6
440	Fertilizer	-	6	8
480	Fluorspar	-	-	6
490	Food products, canned or preserved in straight or mixed C/L	67	13	-
495	Fresh Fruit	31	13	20
500	Fresh Fruit, cold pack	-	13	-
530	Gypsum or Gypsum Rock - open cars	-	1½	1½
535	" " " " closed cars	-	1½	3
555	Iron & Steel Articles, Mfd. - Angles, Bars, Pipe, etc.	200	10	16
560	Iron or Steel Articles - Axles, Blooms, Ingots, etc.	50	10	16
565	Scrap Iron or Steel - copper clad	-	-	16
570	" " " " - not " "	-	10	16
575	Fruit & Vegetable juices - frozen	-	13	-
580	Kalsomine, dry	-	6	-
590	Lard, Veg.-Oil Shortening	7	12	-
595	Lead & Zinc Products - Anodes, Sheet, etc. 90% lead or zinc	49	-	16
600	Lime Products	9	6	6
605	Limestone - open cars	-	15 [★]	1½
610	" - closed cars	-	1½	3
615	Limestone, asphaltic	-	1½	-
630	Logs, Bolts - native woods	-	8	-
635	Lumber, shingles, lath - native woods	-	10	20

★ Flat increase per ton.

Tariff Item No.	Commodity Description	No. Articles Included in Each Item	Maximum Increases in cents per cwt.	
			X-162-B	X-166-B
660	Manure, animal	-	6	8
665	Potash products	-	6	8
670	Marl, agricultural - open cars	-	15 [★]	1 ¹ / ₂
675	" " - closed cars	-	1 ¹ / ₂	3
700	Peat moss & Peat	-	6	8
705	Nails, spikes, etc.	8	10	16
710	Edible Nuts	-	-	22
715	Fish oil - not edible or medicinal	-	12	20
725	Vegetable oils	37	12	20
735	Iron ore, not ground or hydrated	-	12 [★]	1 ¹ / ₂
	" " to Upper Lake Ports	-	-	1 ¹ / ₂
745	Aluminum ore and concentrates	5	12 [★]	1 ¹ / ₂
750	Iron Pyrites	-	-	1 ¹ / ₂
755	Chrome & Manganese ores	-	-	1 ¹ / ₂
760	Copper ores & concentrates	-	-	1 ¹ / ₂
765	Lead " " "	-	-	1 ¹ / ₂
770	Zinc " " "	-	-	1 ¹ / ₂
780	Paper, scrap or waste	-	10	11
810	Petroleum & Petroleum Products in tank cars	34	6	10
815	Phosphate Rock, acidulated or ammoniated	-	6	8
830	Pig Iron	-	10	16
840	Stucco or Wall Plaster	6	6	6
855	Posts, Poles & Piling - Fence, Pit Posts, etc.	15	10	20
870	Pulpwood	-	8	-
895	Rails & Railway Track Material, iron or steel - Angle Bars, Track Material, etc.	36	10	16
900	Fire Brick	35	6	6

★ Flat increase per ton

Tariff Item No.	Commodity Description	No. Articles Included in Each Item	Maximum Increases in cents per cwt.	
			X-162-B	X-166-C
920	Rock, Stone, etc. asphalt or bituminous coated	-	1½	3
925	Roofing, siding or sheathing - iron or steel, pitch, asbestos & asphalt coated -	-	-	16
930	Roofing chips or granules - open top cars " " " " - closed top cars	-	-	1½ 3
935	Salt	-	6	3
940	Salt Lake, Glauber salts	-	6	6
950	Sand, N.O.I.B.N. or Gravel, in bulk - open cars	-	15 ★	1½
955	" " " " " " - closed cars	-	1½	3
965	Shells, oyster, clam, etc. - open cars	-	15 ★	1½
970	" " " " " " - closed cars	-	1½	3
990	Soapstone or Talc	-	-	6
995	Sodium Nitrate	--	6	8
1010	Stone, Marble or Granite - closed cars	-	1½	3
1015	" " " " " " - open cars	-	15 ★	1½
1035	Sugar - beet, cane or corn, etc.	6	10	12
1050	Sulphur	-	2	9
1055	Syrup, corn or wheat	-	-	12
1080	Tar and pitch products	10	6	10
1095	Ties, mine or rail, wooden	-	10	20
1100	Tile, clay or concrete	-	-	3
1125	Vegetables, fresh or green	40	13	20
1130	" " " " - cold-pack	-	13	-
1135	Veneer, plywood - native woods	-	10	20
1160	Wire, iron or steel--fence, barbed, etc.	8	10	16
1170	Woodpulp	-	10	14
1175	Wool & Mohair - greased or scoured	-	20	30
1190	Coal, Anthracite, Bituminous & Coke	23		
	Where rate is			
	\$1.00 or less per ton		15 ★)	
	between \$1.00 & \$2.25 per ton		25 ★)	2
	over \$2.25 per ton		30 ★)	

★ Flat increase per ton.

Note: X-162-B increases were nearly all 20 percent for the above commodities.
X-166-C increases varied between 20 and 30 percent for different
regional and inter-regional shipments.

(Page 11178 follows)

THE WITNESS: I might explain in starting with this brief; that in Part I we deal with general principles such as "Just and reasonable rates", "Unjust discrimination", "Undue preference", "Detriment", "Similar circumstances" and Conditions" and our general views on the rate structure in Part II deals with the problem of rate equalization. In Part III we come to the sequence of applying our equalization proposals in the practical effect of the rate structure. In Part IV we explain how competitive rates would enter into that structure and in Part V we take up another problem which is also of concern to the rate structure, the distance factor. I might explain that in as much as some of these changes are statutory in nature we have put them in a separate brief and in this brief we will merely refer to them.

THE CHAIRMAN: Q. It is in one of the later briefs?

A. It is in the brief titled "Regulatory Legislation".

Introduction. In this Submission will be outlined the general principles upon which it is proposed that the Canadian Freight Rate structure should be based. The procedure will be to define and explain the central concept "Rate equalization", and to indicate the extent and nature of the acceptance to this general principle that should be permitted.

The general principles advocated herein by the Province of Alberta are not offered as panaceas to meet all difficulties of so complex a problem as freight rate regulation. Any practical proposals on this subject must include sufficient provision for flexibility in regulation. It is not our view that satisfactory results in the regulation of freight rates can be obtained by rigid adherence to any one set of principles. But having made this concession to the need for flexibility in the regulations, it nevertheless remains true that

satisfactory regulation is impossible without some consistent principles on which judgments can be based. But once the general principles that determine the form the rate structure should take have been decided upon, the familiar elements and concepts of regulation such as "just and reasonable rates" "unjust discrimination", "undue preference", "detriment", "similar circumstances and conditions" take their definitions and find their place in the general scheme in terms of those principles. The latter act as mooring-points for the whole system and prevent the confusion that is created by the intrusion of ill-defined concepts which cannot be related in any fixed manner to the system itself. Under such conditions it becomes difficult to obtain a clear conception of the purpose and nature of regulatory action. It is our submission that the persistence of many of the anomalies in the rate structure which will be brought to the attention of this Commission can be explained in large part by the fact the essential tools for satisfactory regulation -- the basic concepts used -- have been rendered ineffective by the failure to define them in terms of an acceptable set of general principles.

In this Submission the general principles will be defined in terms of what their application to the rate structure would involve, so as to provide concrete standards by which fair and reasonable rates can be judged. As a matter of convenience, the general principles will be referred to collectively as the "equalization principle". The latter term may sometimes be understood to include both the positive requirements of rate equalization and the exceptions or other conditions which warrant departures from the initial uniformity of rates.

The immediate consequence of rate equalization would be the removal of existing regional differences in class and non-competitive commodity rates. Until that is accomplished any plan of revision would be incomplete. The circumstances under

which regional differences in transportation conditions might be given recognition and the form which that recognition would take will also be dealt with in the course of this Submission.

Q. Then you pass to Part 11 and you begin to discuss rate equalization. Would it be well at this point if you made a short statement as to the different kind of rates in the rate structure?

A. According to the Act three different types of rates are recognized, standard rates, Special rates, and competitive rates. In the first paragraph where we call for the equalization principle advocated by the Province of Alberta to apply, when we say class rates we are speaking not only of standard class rates but special class rates which are, according to the Act, special rates, but nevertheless are in those first class and general rates, and the general commodity mileage scale by which we mean these rates are published as applying between different points or sometimes to the same destination. Our submission reads: Normal commodity rates - being the accepted formulae for establishing non-competitive commodity rates - should be uniform in all regions for like commodities.

THE CHAIRMAN: That has to be non-competitive rate?

A. Yes, my lord; that is a mistake. We call attention to that in the errata. I should explain, perhaps, the outline of Part II. Starting at page 3 we define equalization principles in general terms. . In Part B we are concerned with the origin of the present differences and the reasons that have been given for those differences and some of the justifications which have been given for these differences from time to time. In Part C we are discussing the problem of equalization as opposed to the regional rate system, which, in general, has applied up until the present

time. Part C starts on page 8. On page 11 we discuss the question of equalization as we understand the term under the present Railway Act, and in Part E we refer to certain circumstances where similar issues have been encountered in the United States.

COMMISSIONER INNIS: Q. You do not say anything about an investigation being carried on?

A. You are referring to the I.C.C. equalization?

Q. In the particular text?

A. No, we do not refer to that.

Q. You do not take any stand with regard to the Order in Council requiring that investigation, the equalization of freight rates?

MR. FRAWLEY: P.C. 1487. I do not know that we say anything about it. We will have something to say in the general summing-up.

THE CHAIRMAN: Do you intend to advance these same views before the Board when they take on the equalization task?

MR. FRAWLEY: That is the first time I have been asked about that. We have not gone to the Board under P.C. 1487, but we have sought this inquiry before this Commission and continue to seek it and all the time we knew of the P.C. 1487 order. My instructions were to come before this Commission and lay the case of Alberta before this Commission, and then with a new set of principles laid down by this Commission, then, presumably, the other inquiry will proceed. I also have some views with regard to the restrictive language of P.C. 1487. I pointed out that the language used in that Order-in-Council ^{is almost identical} with the language in P.C. 886. One would think that the draughtsman had P.C. 886 before him

when he drafted this one. That is what they had in P.C. 886. Those are some of our views with regard to P.C. 1487. We think it is not a matter of origin. We want to take our recommendations to this Commission before we address ourselves to them.

THE CHAIRMAN: You must remember that we have nothing to say as to how you should guide yourself with respect to the other inquiry.

MR. FRAWLEY: Oh, yes.

MR. O'DONNELL: It would save a lot of time if you went to the Board and asked them to look into this question of equalization.

MR. FRAWLEY: I could not disagree more with my friend on that.

THE WITNESS: I will continue to read from Part II about the middle of the page.

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(Page 11183 follows)

The above conditions form the foundation for the rate structure. It is obvious, however, that complete uniformity cannot be realized in practice. It is important that departures from this uniformity be permitted in order to transfer the principle from a pure theory to a practical and acceptable solution to the freight rate problem. The exceptions include the following. The itemization at the top of the page indicates in general the requirements of equalization and what follows gives the exceptions which would be permitted to remain alongside that application of that principle.

(1) Commodity discrimination: The practice of charging different rates for different commodities as exemplified in the freight classification should be continued, although not necessarily in its present form.

(2) Competition: Carriers may be permitted to meet competition of other carriers subject to certain limiting conditions described in Part IV of this Submission, and in the Alberta Submission on the Long-and-short-haul Rule.

(3) Market Competition: Carriers may be permitted to meet market competition subject to the same conditions as for carrier competition provided that no disadvantage is created at other origins or destinations.

That should read, I believe "either origins or destinations". I believe that is the way that should read sir - "either origins or destinations".

MR. EVANS: It may be "other".

A. Just looking at it again it could read either way.

(4) Commodity rates on specific movements of commodities may continue to be made without the carriers incurring automatically the obligation to extend them to all other movements. Differences in the nature of the movements, e.g. those from primary producer to processor: those covering movement of semi-manufactured goods: those covering movement of manufactured goods direct from point of manufacture; export or import rates, and other similar cases, may authorize a difference in rates; provided that, within each of the preceding types of movements the same basis of commodity rates should be available to all shippers in all regions of the country.

(5) The level of rates established for reasons of national policy will be determined by the nature and aims of the policy in question.

Perhaps the most important consequence of accepting the equalization principle as a starting point is that some historically important determinants of rates and rate levels would be ruled out, or at least greatly restricted in scope. This step would not involve a radical transformation of the rate structure, since there has been a noticeable trend in the direction of equalization for many years. A similar and even more pronounced trend can be noted in the United States experience where it has been fostered by changes in the Interstate Commerce Commission - I think the words there should read "changes by" the Interstate Commerce Commission, notably in Class Rate Investigation 1939 reported in (1945), 262 I.C.C. 447 which on appeal was upheld by the United States Supreme Court.

In defence of differences in regional rate

levels, cost of service, differences in traffic density, and competitive conditions have been relied upon in varying degree. Under the method advocated in this Submission, cost of service would remain primarily as a determinant of the general level of rates for the system as a unit. It would continue to be one factor influencing the assignment of commodities to the various classes in the freight classification, and it would also be used wherever it becomes necessary to determine minimum levels for competitive rates. Likewise competitive conditions would not be a determinant of the general rate level within a region, but would be grounds for permitting departures from that rate level in particular cases.

In the next part of the Brief I will not repeat that summary which I have already given. Coming to Part B dealing with the origin and asserted justification for regional differences in rate levels, I might say here, sir, that this is just by way of a brief historical summary of how the conditions which exist today arose. I do not propose to read it all, but will perhaps note the fact that equalization to the extent that it has proceeded so far, has resulted from the consolidation of numerous regional systems into larger and larger units, until recently there remained but five principal rate operations which were subsequently reduced to four with the removal of the mountain differential.

THE CHAIRMAN: You say there are five principal rate operations?

A. I was explaining that until recently there were five and it is now four with the removal of the mountain differential.

Q. Now does your concept of equalization

mean that equalization should be in each district or between districts? You say there are five and now four. Now, would you say that rates should be equalized; do you mean equalized separately for different regions independently of the other regions, or should the equalization spread throughout?

A. I think we mean both, sir.

Q. Well, of course, if you mean the second you mean both. You are not confining it to the first?

A. No, we mean equalization as between regions.

Q. Yes, I see that later on you do go into that more fully, but I think the time has come to raise the question again. We had on an earlier occasion to look into Section 314 of the Railway Act which calls for equalization and the equalization which 314 calls for is said to be in respect of all traffic of the same description carried upon or upon the like kind of cars or conveyances passing over the same line or route and I asked whether anybody could enlighten us as to the definition of that term "the same line or route" because it is a condition of equalization that the traffic be carried over the same line or route. Does that mean the whole line of the railway from ocean to ocean? Is that the "line" or has it ever been interpreted or shall we be required to interpret it ourselves for the first time?

MR. FRAWLEY: That may be so, but there was one case that we found that I had intended to bring to the attention of the Commission, and perhaps during the production of this Brief might be a good time to bring that case to the attention of the Commission. I have not got the case here at the moment. I can get it

at the noon adjournment, the name of it, and we might discuss it during the hearing of this Brief.

THE CHAIRMAN: I would like very much to have it.

THE WITNESS: On page 11, sir, we cite this same Section, and proceed to make some comments on it when we come to that page. Continuing on page 6 in the middle paragraph we note some of the remaining smaller regional divisions. I might say in the last sentence which reads:

"On the National Transcontinental and Lake St. John lines of the Canadian National Railways in Northern Quebec a scale higher than the Ontario-Quebec scale is still in effect"
that
that/should refer to town tariff scales in question. I do not think that refers to the standard tariffs.

Q. Whereabouts is that?

A. The last sentence of the middle paragraph sir.

I just wanted to avoid giving the impression that there was a difference in the standard scale there. There is a difference in the town tariffs which applied. After "Ontario-Quebec" you might insert the words "town tariff".

To indicate the progressive changes in the various rate levels, we have outlined those in Appendices A and B which are found at pages 52 and 53 of the brief. In these Appendices we have taken the first class rates for a distance of 200 miles and I should explain there that the figures shown here are not necessarily a measure of the actual differences between the various rate operations today apart from this one mileage. The differences vary both with

the class used and the mileage chosen, but we have merely used that to show the principal changes to which class rates as a whole have been subjected from the earliest date available which is January 1st, 1884.

MR. FRAWLEY: Now Mr. Darling, you do want to make one addition to Appendix A and Appendix B to reflect the very latest change that we know of?

A. Yes.

Q. Those Appendices are on pages 52 and 53, my lord.

A. On October 11th, 1949, due to the increase of 8% the figures in the columns become respectively for Maritime Territory 86¢ -

Q. If the Commissioners would insert in the first column, the date column, the date October 11th 1949.

THE CHAIRMAN: We have done that. What comes after that?

THE WITNESS: The Maritime Territory rate is 86¢ but for Ontario-Quebec \$1.08. For the Ontario Superior Territory \$1.50 and for the Prairie Territory which now includes the Pacific \$1.33. And turning to Appendix B the changes become effective the same date, October 11th 1949 - Maritimes 70¢, Ontario-Quebec 89¢, and Prairie and Pacific both \$1.17.

THE CHAIRMAN: Your heading is "Manitoba, Alberta and so on?

A. That applies down to September 1st 1914. There was originally three local scales applying. We go on to point out that the rate levels in the Maritime Territory which start out at a lower level than in Ontario-Quebec show the traces of the original national policy in connection with Maritime rates influenced by the rates imposed upon the Intercolonial Railway. We deal also with the origin of the difference between Ontario-Quebec and the Prairie rates and on page 7 we give the origin of the Prairie scale. It was

prescribed by the Chief Engineer of the Government Railways, Mr. Collingwood Schreiber in 1883 but prior to that the Ontario-Quebec scale was first applied in the prairies as well for a very short period of time, and then with the change the proposed rates of Mr. Schreiber were doubled, or I should say 50% greater than those in Ontario-Quebec and the reasons given are in the quotation given which is from a letter to the Minister of Railways in submitting the tariff for approval.

The only point we wish to make there is that the initial difference in rates between Ontario-Quebec and Prairie territory, in our submission, can be said to be based on the light density of traffic which originally obtained in the Prairie Territory. Until the Pacific scale was removed, yet another reason for difference in rate level was in effect in that the costs of operation in the Mountain Territory were used to justify a difference in the level of rates as opposed to the other Territories.

THE CHAIRMAN: When he uses the terms "Operating a railway in the north-west" it includes the Pacific. Is that what you say?

A. I don't think we did there, sir. The Pacific rates were originally established higher than the Prairie. I don't know that in 1883 the Canadian Pacific was completed. This date was 1883; I think it was 1885 that the Canadian Pacific was operating in British Columbia. That would refer mainly to the Prairie Territories.

Turning to Part C of this section, we deal with rate equalization on the system basis as opposed to regional rate levels. And I might say in connection with this section that its contents are reasons why we think the equalization is justified economically. It so happens that there is a smaller area of contention on the equalization issue at the present time since the Canadian Pacific has also included equalization

and we do not propose to take very much time to argue a point that, to some extent at least, has been implicitly conceded; but we felt that we should have our reasons at least placed on the record with the idea that we did not feel that equalization was merely a charitable gesture which we thought should be accorded to us, and also that there are more reasons for equalization than have been given in the submission of the Canadian Pacific.

MR. EVANS: There was no mention of charity there.

A. No, I was just going to give the reason you mention:

" "In order to set at rest the complaints of the alleged disparity",

and I think that is the sum total of the justification there.

MR. FRAWLEY: The "charity" was a sort of soothing phrase.

A. That was my own phrase and I was just pointing out that we do not want to leave the impression what we were asking for was something by way of a gift or a special concession.

I do not propose to read this section other than to point out that the main argument is that the principal rate territories in Canada are not autonomous units but are functionally related to one another. There is a sort of subdivision of labour involved. Certain territory comprises very dense traffic; main line areas and other areas are primarily branch lines. The one is necessary to the other but to subdivide a territory into a number of regions has the effect, or may have the effect, of cutting what are primarily branch line territories producing raw materials and bulk products over the wide area for which a large mileage of line is required to pay a larger than proportionate share of their costs of railway transportation. In other words, I think it is generally conceded that the main line territory is in some respects obligated to provide for the maintenance of the branches on which it depends and we claim that the inter-relat-

ion between the various parts of the system are such that there is no justification for maintaining different levels, that at the present time not only actual operating results but also the system factor which we speak of, is something which should call for a measure of equalization.

The main points that we refer to, starting at the top of page 9 first of all, dealing with the purpose for the construction of branch lines - but what applies to branch lines applies equally so to areas which are primarily feeder areas. In the second place the regional results which can be obtained are misleading if they ignore this organic factor in the system as a whole, and we point out at the bottom of page 9, that the flow of traffic within the system might be altered in many ways to produce very different results between regions, particularly if the regions themselves were very small. I would just read the conclusion of this section.

THE CHAIRMAN: Where is it?

A. Starting at the last paragraph on page 10, sir, passing over the three other factors which we mention which are, in a sense, very similar to ones we have already dealt with.

MR. FRAWLEY: Reading from the last paragraph on page 10?

A. Yes. These differences in function of lines within a system make the use of regional costs alone for rate-making purposes subject to many qualifications. Carried to its logical conclusion such a method would result in lower rate levels wherever the traffic densities were higher. There would result a method of rate making based almost inversely on the ability to pay. The central areas, while benefitting from the traffic and markets created by the system, would not be making a proper contribution

toward the support of the system. At the same time a higher level of rates in the outlying areas would be a factor retarding the development of those areas. The difficulties as well as the disadvantages of regional rate bases can only be avoided by an equalization of rates on a system basis.

I would merely conclude, sir, that we do not wish to argue this point at great length and I think the main problem is the comparison of the methods and extent of equalization proposals that have been offered to this Commission. In Part D we turn to rate equalization and the Railway Act.

MR. FRAWLEY: Just in a word what is the purport of Section D?

A. This too discusses the position of the Railway Act and its interpretation by the Board with regard to rate equalization, in particular to the equalization which we are proposing.

Q. Now, if you will perhaps proceed to read Section D, omitting of course the actual context of the section?

A. The status of rate equalization under the existing legislation is largely determined by the interpretations of Sections 314 and 317 of the Railway Act.

Q. Now, when I said to omit the sections you do want to call attention to the essential elements of this subsection?

A. Yes, the language of 314 indicates that it prescribes certain mandatory conditions upon the Board in saying that "All tolls shall be charged equally" but it is, at the same time, qualified by two phrases which are "Under substantially similar circumstances and conditions" and, secondly, "Passing over the same line or route" and with those two qualifications it is plain that equalization in

the sense which we extended in our proposal is not mandatory upon the Board.

Q. You say that 314, speaking of that section now, does not in your opinion require the Board to bring about equalization?

A. Not with any interpretation that can be given to "Passing over the same line or route". I think in regard to the question which was asked earlier regarding the interpretation of "Line" or "route", it seems to me that judging by the decisions of the Board that term could only be applied to the physical line or perhaps competing lines between the same points or parallel lines.

THE CHAIRMAN: Now, what do you mean by "critical lines"? Is that what you said?

A. No, I said only by a physical line.

Q. I am sorry. What do you say about it?

A. I would say that it was interpreted largely as the physical line. There are a number of cases cited.

Q. But does that take us any further? "Physical line" - does that mean the whole of the Canadian Pacific line or the whole of the Canadian Pacific main line?

A. No, I think that would be interpreted, sir, as taking, say, the line from Ottawa to Montreal and I think the traffic here which must be treated equally is all traffic passing over the same line between Ottawa and Montreal, for example.

COMMISSIONER INNIS: In either direction?

A. It does not say in either direction.

MR. COVERT: I think there have been cases that have held that there might be a different rate going one way and the other.

A. Yes, that is the way the distributing rate works in the West, of course.

MR. FRAWLEY: Is the line from Red Deer to Edmonton on the same line or route as the line from Montreal to Ottawa?

A. I would say within the meaning of this Act they are both Canadian Pacific Lines but that the Board has never used that interpretation to say that 314 applies to the rates as between Montreal and Ottawa and Red Deer and Edmonton.

THE CHAIRMAN: Suppose you take a long stretch. Take the main line of the Canadian Pacific from Winnipeg to Calgary. Is that the same line that would stretch from Winnipeg to Vancouver?

A. I would submit that it is not, sir.

Q. That is what we are trying to get down to, what is the "same line or route" because, you see, it governs the meaning of the word "equalization" and it is very important.

MR. FRAWLEY: I have at least one case.

THE CHAIRMAN: We can get that from you later?

MR. FRAWLEY: Yes sir.

THE WITNESS: I can quote that now.

MR. FRAWLEY: There is a case Canada Cement v Michigan Central in 14 J.O.R. and R. 291 but now I would like an opportunity to consider it further before discussing it.

THE WITNESS: There is a case here, sir, which I might refer to. It is Plunkett and Savage v Express Traffic Association and that is at Volume 28 of the Canadian Railway Cases page 402.

THE CHAIRMAN: What was the year?

A. This was September 29th, 1923 which is the date of the judgment sir.

THE CHAIRMAN: What was your reference, Mr. Frawley?

MR. FRAWLEY: I am sorry, my lord, I have not got it here

A THE WITNESS: It says in this case starting at page 405: "Mere rate comparisons are not conclusive. No inferences can be drawn from mere comparison of distance on different portions of railways. Where a complaint of discrimination is raised on mere comparison of distance, the Board has held that this should be supported by other evidence."

The complaint deals with discrimination, but I think it is clear that distance on the same railway is not something provided by the Act, and it also says ---

MR. EVANS: Q. You do not make any distinction between the rates on the same railway or on a different one; do you mean on the same line of railway?

A. As between two points A and B.

Q. The same line of a railway?

A. Yes.

THE CHAIRMAN: Q. What do you say about that?

A. I was going to read further: "Mileage alone is not a rigid yardstick of discrimination."

THE CHAIRMAN: Q. Where are you reading from?

A. I am reading from that same case, Plunkett and Savage.

Q. You are reading from the case?

A. Yes, a further extract from the same page.

MR. FRAWLEY: Q. By the way, when was this section 314 enacted?

A. I do not know the exact date of that. I think that it was in the Act in 1903, if not much before that. It is not a new section by any means.

Q. Going on to subsection 3, the meaning of the term used in this section?

A. It is indicated in section 317, and I think that the purport of this section as far as equalization is concerned may be considered as an enabling section.

MR. FRAWLEY: You have quoted subsection 1. Perhaps, the brief should indicate that. It is the first subsection of the section that is quoted.

Q. What were you saying about that?

A. I was saying that this section may be described as an enabling section as far as equalization is concerned, in that the Board is given power to set up its own definition. As far as I see it, this section is not an obstacle as far as the terms "just and reasonable rates", "unjust discrimination", "undue preference", "detriment", "similar circumstances and conditions" in such a way as to make equalization a requirement. That, as I say, is not mandatory by the Board.

Q. Does this section remove the difficulty?

A. Not to the extent that it does not make equalization mandatory but it still leaves the Board without any guidance in deciding the issue in that breadth.

MR. FRAWLEY: By the way, sir, there is a mistake and it may be in your brief in the third last line. It should read: "Within the meaning of this Act".

THE CHAIRMAN: Are you going later on to suggest some amendment to that statute?

MR. FRAWLEY: Yes, sir, we will.

THE CHAIRMAN: But not during the presentation of this brief?

A. Not necessarily on this particular section.

THE CHAIRMAN: I am asking about that particular section. Will you tell us later on, what you want done to it?

MR. FRAWLEY: Yes, sir, in the Regulatory Legislation submission.

THE CHAIRMAN: In this brief?

MR. FRAWLEY: No, in the brief dealing with statutory regulations.

THE CHAIRMAN: What are you saying to-day with regard to this section 317?

MR. FRAWLEY: We say that as it presently stands it does not enable the Board to introduce the kind of equalization we are advocating. We have a separate brief in which we have gathered up all the information on statutory changes.

THE CHAIRMAN: What does this brief show?

MR. FRAWLEY: It indicates the actual changes we think should be made, the changes we have advocated to be implemented by changes in the statute.

THE CHAIRMAN: We are not going to be asked to go over the same ground twice?

MR. FRAWLEY: No, I think we can assure the Commission as to that.

THE WITNESS: Starting from the end of the citation of section 317 it goes on. From this section it will be noted that the Board has been left free to define as it sees fit the concepts which have to do with equalization.

THE CHAIRMAN: Q. Do you wish the Board to have something more to say on the economic policy than the statute gives it?

A. No, it is not our intention to have the Board do that, but rather we are simply saying that we do not want to force the Board to take a stand on this issue of economy. We say that the position of that is in the statute.

Q. We have heard already in your case that the Board should take a more active role in an economic policy. Is this one of the ways of telling us that

an active role should be brought in?

MR. FRAWLEY: Yes, and we have thought that a more active role should be given to the Board by a statutory principle.

THE CHAIRMAN: It would come into play in this question of equalization of rates?

MR. FRAWLEY: Yes, sir, it would come in that, generally speaking.

THE WITNESS: This combination of circumstances will explain the main difficulties that have stood in the way of rate equalization in the past. This can be made clearer by drawing a distinction between "personal" discrimination and "local" or "regional" discrimination. The term "personal" will be used here in a broad sense to cover, in addition to discrimination between persons at the same point, all discriminations over common routes to or from common destinations and origins and also discriminations between competitive points where there is a common destination or origin involved. This type of discrimination is clearly the type prohibited by the Act as can be seen from the phraseology of the Section 314 just quoted: "substantially similar circumstances and conditions", "passing over the same line or route", "charged equally to all persons and at the same rate". The identifying feature of this type of discrimination is the presence of some direct connection or common point between the two hauls compared. Sometimes this connection is due to competition but otherwise it may be a straight physical identity. That is to say, two people may be shipping household goods over the same line but there is no connection between the two.

THE CHAIRMAN: Q. Between the same points?

A. That would be a little clearer, sir.

THE WITNESS: In contrast to this, the concept of "regional discrimination" is used here to refer to differences in similar rates for the same commodity in different regions.

MR. FRAWLEY: Q. Is this a definition found in the Board of Transport Commissioners' decision?

A. No, that is one we used in this particular sense and we are not claiming any prior right to it as long as our definition is understood.

Prior to the formation of the Board of Railway Commissioners, the majority of complaints involved some form of personal discrimination. It was primarily to overcome abuses of this type that Parliament created the Board of Railway Commissioners in 1903. The early railway legislation in Canada, as in Great Britain and the United States, was particularly concerned with the removal of personal discrimination, and in this respect the present Railway Act has descended essentially unchanged from the early legislation. The Act contains numerous sections which we have grouped under the term of "personal discrimination" in which such things as rebates and false billing and neglecting to file joint tariffs and other penalties are found. With respect to personal discrimination it may be said that the Act has fulfilled its purposes. Personal discrimination is no longer a serious problem for the reasons that it is this type of discrimination which the Board has held to be prohibited by statute. A considerable body of precedent has been built up dealing with the wide variety of conditions under which this type of discrimination is encountered.

MR. FRAWLEY: Will you at this point look at the Canadian Pacific Railways' brief, Part II, and here,

my lord, I should say by way of explanation that we will endeavour to meet the case of the Canadian Pacific in this fashion by referring to it as we present our own case. We do that because we understand that is the wish of the Commission.

THE CHAIRMAN: I hope you will fulfil that promise.

MR. FRAWLEY: Will you look at page 76, and there you will find ---

THE CHAIRMAN: Page 67 of Volume II?

MR. FRAWLEY: Yes, sir, Part II. You will see there that the Canadian Pacific says that the principal differences between the position taken by Alberta and the proposals which are to be made by the railways on this matter are, first, differences in concept and, second, differences in the method by which and the extent to which equalization can be brought about.

THE CHAIRMAN: What page is that?

MR. FRAWLEY: That is page 67 of Part II, sir.

Q. What comment have you to make on what the Canadian Pacific says there?

A. Dealing only with the first point mentioned, differences in concept, on page 76 and extending over to the top of 78, there is some criticism of the definition which we have made in the part I have just read of our own brief, and I do not know just what the purport of this is. I have read it over several times to discover the meaning. I think it is either to say that the definition does not exist, or if not, I am unable to say what it is.

THE CHAIRMAN: Q. Will you refer me again to the part of your own brief?

A. It was on page 12 where we propose to make a distinction between what we call personal discrimination

and regional discrimination, and I suppose this is the time to say that they are one and same thing.

MR. EVANS: Where do you find that?

MR. FRAWLEY: Page 76, 77 and at the top of page 78.

MR. EVANS: Q. You say they are one and the same thing?

A. By implication, yes.

MR. FRAWLEY: I do not think we will get very far with interjecting. That is a matter of cross-examination.

THE WITNESS: The term of regional discrimination occurs on this page, from the bottom of page 76 over to page 78, I think six times, and in four cases, I think, they are using our definition in the clinching of the term, and some other definition seems ^{that} to have been substituted, and I do not know just what would prove under these conditions, but I don not wish to say anything further than that at the present time.

MR. FRAWLEY: Q. Going on at the top of page 13, will you continue?

. However, as experience has fully shown, it is not sufficient to remove personal discrimination to assure general satisfaction with the rate structure and rate regulation. A more outstanding issue in many controversies over freight rates in the past has been regional discrimination. Important facts on regional discrimination were made in the Western Rates Case 1941 (17 C.R.C. 123), In the Rate Reduction case 1942, 11 G.O.R. & R. 255, in the General Freight Rates investigation, 1927, (17 G.O.R. & R. 123), and most recently in the Mountain Differential case in 1949 - there is a correction to be made there. The citation of Mountain Differential Case is 39 J.O.R. & R. at page 65.

1 In the past, complaints on regional discrimination were often ledged on the groujds of unjust discrimination. But as the Board had already identified unjust discrimination with what has here been called personal discrimination, the complaints were rejected since obviously no question of personal discrimination was involved .

THE CHAIRMAN: Q. Are you saying now that the Board in the interpretation of those words has defined unjust discrimination?

A. There are numerous definitions of unjust discrimination.

Q. Has the meaning of that Board prohibition ever been decided by the Board; you say that it has never been of any use?

A. The use of discrimination in this section is still not an answer in connection with competition or in some way between two parties involved; that is to say ---

Q. You mean two localities?

A. Yes, the rate in Ontario would be \$1.00 and in the West \$1.20.

Q. Go on?

A. I was just going to say that under this section to lodge a complaint of unjust discrimination it would be necessary to show that there was some action or some detriment suffered by the party paying the higher rate and it is not sufficient, as in the case I cited before, merely to compare the difference in rates.

COMMISSIONER INNIS: Q. The word has already been identified by the Board?

A. No, it is the use of the term. I think their

meaning of unjust discrimination has been clearly defined in numerous cases.

MR. FRAWLEY: Q. The witness has referred to the case of Plunkett and Savage, 28 C.R.C. where the Board said that mere rate comparisons are not conclusive.

A. There were lots of citations given as to that matter. I cite at the bottom of page 13, namely, The Spanish River Pulp and Paper Mills. There are a number of rulings of unjust discrimination there. A summary of the Board's decision in the 21% case is found in Volume 38 of the Board's Judgment at page 47. From pages 47 to 51 are recited a number of leading precedents with regard to unjust discrimination.

THE CHAIRMAN: Q. In what case was that?

A. That was the 21% case.

Q. The recent case?

A. Yes, March 30th, 1948.

Q. What page is it on?

A. From pages 47 to 51 in Volume 38.

Q. There the interpretation of the words "unjust discrimination" is gone into?

A. I might just read just one or two of those, sir. I am reading now from ^{page} 48 of this case, and the Board is citing the case of re Freight Tolls 1922 (27 C.R.C. 153, at page 172): "Mere mileage comparisons do not afford criteria of discrimination . . ."

MR. O'DONNELL: Q. Then read the rest of it?

A. ". . . mileage is not a rigid yardstick of discrimination: discrimination, in the sense in which it is forbidden by the Railway Act, is a matter of fact to be determined by the Board."

THE CHAIRMAN: That does not include discrimination as between localities?

A. Yes.

Q. Is there any particular case where the Board has dealt with that matter of subsection 4 ?

A. I do not know of any explicit one.

MR. FRAWLEY: On page 48, the same page from which the witness has read I might call your attention to what the Board has said in the Spanish River Pulp and Paper Mills, which is 12 J.O.R. & R. page 268.

THE CHAIRMAN: You have that in your brief?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: That is where the Act says as to discrimination between localities?

A. Our term "personal" is perhaps a little broader than the individual. It might be operated in that locality.

Q. The Board says here is the locality, but you must have someone in that locality who must be discriminated against?

MR. FRAWLEY: A person must show a detriment.

THE CHAIRMAN: How do you say that the Board should apply it? Suppose you say Locality A is prejudiced by a rate given to Locality B, how are you going to show that?

MR. FRAWLEY: We show that there is a different rate.

THE CHAIRMAN: That shows a difference but it does not show an unjust difference.

MR. FRAWLEY: That word "unjust" has a restricted meaning in the word "unjust discrimination".

THE CHAIRMAN: Apparently, the spirit of the Act is that there may be discrimination between localities, It may be a necessary thing. But the Act says that the only kind of discrimination that is deliberate is unjust

discrimination.

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: Q. Has the Board interpreted that when a locality has been prejudiced by unjust discrimination?

A. There would have to be some evidence of detriment supplied; a comparison of the rate would not be conclusive.

Q. If there is no evidence of detriment, you only have discrimination?

A. Yes, under the present Act.

Q. Is your point this, that the Act should have just discrimination?

A. No, sir.

Q. Whether it is just or unjust?

A. No, discrimination is a feature that you cannot abolish nor would it be desirable to do so.

Q. Is that why the Act states that it is unjust discrimination?

A. Yes.

Q. You are not satisfied with that?

A. Our position is that we consider rates are graded according to what I might call types depending upon the generality and their application. For instance, class rates apply over entire territories and they apply between all cities in all territories regardless of the volume of traffic or the size of the town. As between class rates in one territory and the class rates in another, it is, of course, under the present Act theoretically impossible to show unjust discrimination.

Q. That must be because it does not exist?

A. Under the present Act.

Q. In fact; you say it is not visible?

A. It is not a fact; it is a matter of definition.

Q. There must be something wrong that you want to

right.

A. Yes, sir.

Q. What is wrong?

A. We want to remove the regional types that are not justified by conditions that we mentioned here.

Q. You mean, even if they do not hurt anybody?

A. We do not think that concrete evidence of detriment is necessary in those cases; that these rates apply in each territory.

Q. You would give a curtailed definition to the word "line"? Supposing on that line there is a certain commodity that moves from A to C and there is another locality called B, if in that locality B there is no shipping of that particular commodity, can't that locality say there is unjust discrimination against them if they do not get the same rate as B and C?

A. Class rates are important regardless of whether and traffic moves or not and they are available to move whatever possible traffic might arise.

MR. FRAWLEY: Q. Could you illustrate what you mean by taking a one hundred mile movement in a territory and a five hundred mile movement in another territory.

A. At the present time if there is a difference in a rate between these two movements, as has been pointed out, that is not contrary to the Act itself; that is not unjust discrimination, but our position is that that difference must be justified and would indicate, we are saying, that there should be a beginning particularly in these rates of wide generality and equity and any differences which subsequently arise must have a positive reason for that. Differences which now exist have arisen from many different reasons and have been there for a long time, and it is our submission that they do not

represent present-day conditions, but it is very difficult to attack that.

THE CHAIRMAN: Q. Supposing there is a rate on ^acertain commodity from Toronto to Ottawa and the rate on the same commodity from Calgary to Edmonton, assuming that the distance is the same, is higher, the commodity in which case being produced here in Ottawa and the other commodity in Calgary, would you say that is sufficient to show a discrimination that was unjust?

A. Other conditions being equal those rates should be equal.

Q. So that you say by the mere fact that the person in Toronto can get that commodity in Ottawa at a lower rate than a person in Edmonton can get it from Calgary, there is unjust discrimination?

A. Not under the present definition, but it is an unsatisfactory condition.

Q. It is an unjust inequality?

A. Yes.

Q. You say there is an inequality?

A. There may be an inequality that is justified; there might be competition between Toronto and Ottawa.

Q. If you leave out the question of competition and leave out anything that would tend to make a difference, there still remains a difference in the rates?

A. Yes, and that is what we are complaining of, sir.

THE CHAIRMAN: Then you had got down to the question of mileage, Mr. Frawley.

MR. FRAWLEY: In the class rates?

THE CHAIRMAN: Yes.

MR. FRAWLEY: Yes.

THE CHAIRMAN: You say that here is a commodity

the same in Ontario as in Alberta and you haul that commodity in Ontario for less than you haul it in Alberta?

MR. FRAWLEY: That is right.

THE CHAIRMAN: That is your view of what inequality means?

A. Yes, there could not be any personal discrimination shown there.

MR. O'DONNELL: I wonder whether the Commission has reached any decision as to adjournment time. We had spoken to it some time before.

THE CHAIRMAN: We are anxious to accommodate people as much as possible. Are there any trains that go to Montreal later than 4.00 o'clock?

MR. EVANS: There is ^a later train, but it means that about three or four hours are lost to save half an hour here. Perhaps, that might not be considered.

THE CHAIRMAN: Does everybody have to go home on the early train?

MR. EVANS: It is not a case of "have to", sir.

THE CHAIRMAN: We will let you know when we resume this afternoon.

At 1 p.m. the Commission adjourned
to resume at 2.45 p.m. this day.

(Page 11218 follows)

AFTERNOON SESSION

THE CHAIRMAN: I might say that we have been considering what time we ought to adjourn today, in view of the train service to Montreal and the fact that today is Friday. We regret very much to make anybody travel on a later or a slower train, but we think that in the interests of our work we ought to go on to the usual hour, a quarter to five.

MR. EVANS: May I put on the record an answer to a question you put to me this morning, or, at least, you asked me to get the estimate given by the traffic witness for the Canadian Pacific in the 20 per cent. Case of the amount of revenue from agreed charges. There was an exhibit in the 20 per cent. Case, Exhibit 4913. There was no analysis, but there was a rough estimate showing that the revenue from agreed charges to the Canadian Pacific in the year 1948 amounted to about \$4,728,000.

- - -

MR. H. J. DARLING RECALLEDEXAMINATION BY MR. FRAWLEY RESUMED

Q. Mr. Darling, I think you were about page 13?

A. I think I had just finished to where those cases are cited about four lines from the bottom.

Q. Yes, and going on then from there, what have you got to say?

A. Well, I think I will just continue reading this next part here. Such a ruling plainly delimits the

meaning of unjust discrimination to personal discrimination. Strictly speaking, the Act can only be held to prohibit regional discrimination if it happens to be at the same time personal discrimination.

Another possibility of attacking regional discrimination is provided by Section 325 which provides that the Board may disallow any tariff which it considers to be unjust or unreasonable. However, a protest under this section would also be unsuccessful if a reasonable rate were itself to be defined as one free from unjust discrimination. The tendency has been to hold that comparisons of rates in different regions are largely irrelevant. Provided the rates within each region are reasonable per se there remains little ground for comparing them with lower rates in other regions. The differences themselves have been justified by the Board by reliance upon several factors, e.g. cost of service, density of traffic, competition, historical circumstances, or mere geographical dissimilarities.

The removal of regional discrimination, or in other words, the establishment of the equalization principle, will have to surmount the barriers in the present Act and in the accepted interpretations of the statutory provisions by the regulatory body. There are good reasons why the Board cannot be expected to surmount these barriers without clearer direction from the statute itself. As already pointed out, all decisions on the nature of the freight rate structure are in a sense policy decisions. The Board's reluctance to embark on its own initiative on any fundamental changes in policy can be understood. The absence of a plain statutory direction

that there must be no regional rate discriminations is sufficient to explain the Board's position that its main concern is with unjust discrimination and undue preference.

Q. In your view is it sufficient to leave equalization to the Board as it is considering complaints from time to time dealing with unjust discrimination and undue preference?

A. Well, it cannot be denied that the Board has in its own decisions taken several steps towards equalization. There have been different cases where the rate levels have been brought nearer to equality, and in some cases differences removed. In each of these cases, the matter has been decided not as a general principle but really in terms of the particular circumstances which obtained at that time, so that, notwithstanding the fact that the powers of the Act are sufficient to permit the Board to establish equalization on its own initiative, nevertheless, that involves, as I think we point out in a part I just read, decisions by the Board which we think are properly matters of national policy.

Q. So you feel that there will have to be something more than merely leaving it to the Board to interpret unjust discrimination and undue preference in complaint cases?

A. I do not think the very general terms of the Act is a matter to be stretched to allow any step at all. The terms and powers are very broad, and if one is permitted to infer from that that a certain policy is permissible, and, therefore, desirable, I think the Board may be very quickly forced into the position of determining policy rather than administering the Act.

COMMISSIONER INNIS: Q. You do not want the Board to determine policy?

A. No.

MR. FRAWLEY: All right, go on.

A. The above interpretation of the issue is borne out by the fate of previous attempts to gain recognition of the principle of regional discrimination without being required to show explicit prohibition in the Statute. The best instance is provided by the history of Order in Council P.C. 886, passed June 1925. This Order in Council contains probably the most explicit reference to equalization of freight rates as a matter of government policy. Three paragraphs of this Order in Council are of particular interest in the present connection. I won't read the citation, and I pass on to the text.

It might be thought that with a statement of government policy as clear as this, the way was opened for the introduction of rate equalization in its broadest sense. I might go back, and in the first paragraph, the first sentence reads, "The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent," and then in the third paragraph and about five lines down is found the phrase, "under substantially similar circumstances and conditions".

Continuing in the text: However, in the General Freight Rates Investigation which followed, equalization was limited to that of prescribing branch line rates on grain in Western Canada equal to main line rates.

Q. At this point will you just put into the record the changes in the rate structure which were brought about by P.C. 886; first of all, how many were

there?

A. There were five items in general Order 448 of the Board, which was the result of its decisions in general rate discussions.

THE CHAIRMAN: Are you going to give us something now that is not in the Brief?

MR. FRAWLEY: Yes, sir. There are five changes brought about by the investigation instituted by P.C. 886. The first one was - -

A. The first one was that the Crows Nest Pass grain rates to Fort William were equalized as between Canadian Pacific main lines and branch lines, and other lines were to adjust their rates accordingly. The second one was, that rates on grain to Vancouver and Prince Rupert on export were put on the Fort William basis and using the Canadian National distance from Edmonton to Vancouver to apply over the Canadian Pacific distance from Calgary to Vancouver.

Q. And the third one -

A. The distributing tariffs in Western Canada at 85 per cent. of the standard tariff were to apply against the Canadian National as well as against the Canadian Pacific. I think that perhaps it should be explained that the Canadian National did have distributing tariffs between competitive points, unless the Canadian National line was the shorter when it was permitted to use the Canadian Pacific mileage in charging rates; and, four, the export grain rate from Fort William and Armstrong to Quebec was lowered from $34\frac{1}{2}$ cents and 33 cents respectively to 18.34 cents; and, finally, the port of Quebec was equalized with Montreal on grain from bay ports for export, and, two on all traffic from Toronto

and points west thereof for export.

MR. FRAWLEY: Q. That was all accomplished by P.C. 886?

A. Yes.

Q. Will you continue?

A. Our statement in the text -

THE CHAIRMAN: Q. Are you satisfied?

A. No, speaking for Alberta, we are not.

THE CHAIRMAN: I mean, are you satisfied that those dispositions were enough to make? Do you quarrel with any of them as they were made?

MR. FRAWLEY: No, I do not. I am interested in pointing out how little was accomplished in the light of -

THE CHAIRMAN: For instance, they extended the Crows Nest Pass westward as well as eastward?

MR. FRAWLEY: Yes, I do not minimize that; I point out rather what they did not accomplish.

THE CHAIRMAN: It means that the Board had the opportunity of considering the matter.

MR. EVANS: They found against the western contention on a number of points -

THE CHAIRMAN: Yes, and they had the opportunity of considering the matter?

MR. FRAWLEY: Yes, they were directed to equalize under substantially similar circumstances and conditions, but, in any event, they did not bring about the equalization which we are seeking to have brought about.

THE CHAIRMAN: They did not bring about the mileage equalization?

MR. FRAWLEY: No, they did not bring about the things we are at present discussing; there are many things

that they did not bring about. All right.

THE WITNESS: Differences between standard class rates, town tariff rates in eastern and western Canada were left unchanged.

MR. O'DONNELL: It occurs to me that it would be in the interest of everybody to have a copy in the record. I have not any doubt that Mr. Darling is giving the tenor of the finding.

THE CHAIRMAN: It seems to me that we are about to be given a criticism of the judgment of the Board?

MR. FRAWLEY: It might be called that.

THE CHAIRMAN: We have not here, of course, that matter?

MR. FRAWLEY: No, but it is reported in 33 Canadian Railway Cases, and the citation is at the bottom of this page.

THE CHAIRMAN: Are you not repeating again the same thing you told us this morning? What your definition of equality is? It is very simple the way you gave it to me, and which so far you have not succeeded in obtaining from the Board.

MR. FRAWLEY: We thought it well to point out perhaps the reasons why P.C. 886 failed to bring about proper equalization.

THE CHAIRMAN: If you look at Section 38 of the Act, you will see that the Order in Council may direct the Board to do anything which the Railway Act or some other Statute requires to be done. Well, the Statute requires that equalization -

MR. FRAWLEY: "Which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities."

THE CHAIRMAN: Are you really seeking to-day to have the Act amended?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Does it not simplify your case to say, "we want it amended in this respect, and here are the reasons why?"

MR. FRAWLEY: Well, my lord, we have prepared what we think is a complete exposé.

THE CHAIRMAN: Is it any use for you to say, "we want the Act amended, because the Board refused to give us what we wanted on the previous occasion, and we can only get what we want if the Act is amended in such a way"?

MR. FRAWLEY: Yes.

THE CHAIRMAN: But must you not go further than that and show that it is just that the Act should be amended?

MR. FRAWLEY: Yes, I would not ask the Commission to recommend anything that would not be just.

THE CHAIRMAN: Is that the position then, that those words in the Act which limit it to substantially similar circumstances and conditions should be struck out?

MR. FRAWLEY: Well, that may be one of the things that we are asking.

THE CHAIRMAN: The only body that could say whether substantially similar circumstances and conditions exist is the Board. It is true you have an appeal to the Governor in Council. How can we better that for you unless we strike the words right out?

MR. FRAWLEY: My difficulty, my lord, is to go at once to the end result of my case and say "I want the Statute amended in such a way" and then sit down. I have prepared what I think are a lot of good reasons for asking

what I am asking, and I thought it would be helpful to the Commission to present this exposé.

THE CHAIRMAN: So far it seems to me that all we are getting out of these previous cases is that you did not get what you asked for. Is that sufficient reason for amending an Act in itself?

MR. FRAWLEY: No, not in itself, except that to-day we think there should be equalization, and we have not got it as it is now, and we ask this Commission to recommend that we should have it.

THE CHAIRMAN: Then you think there should be equalization under an altered provision of the Railway Act?

MR. FRAWLEY: Yes, we think that there should be a better Statute than there has been up to the present time.

THE CHAIRMAN: That means you can show us how many injustices exist?

MR. FRAWLEY: Yes, I thought it would be helpful to expose the injustices as we see them, and impressing upon the Commissioners the need for the recommendations. I presume that I cannot have the recommendations by just asking for them.

THE CHAIRMAN: Have you tabulated these injustices?

MR. FRAWLEY: Yes, the purport of the brief is to show the inequalities in the freight rate structure. That is the whole purport of the brief. I am sure that when we have completed the brief that the situation as we see it to-day, and as we want it changed, will become apparent.

THE CHAIRMAN: It will be complete?

MR. FRAWLEY: It will be apparent.

MR. O'DONNELL: The Commission is not being told what it is being asked to have done about it, and it makes it difficult for anybody who has to examine Mr. Darling to pursue the soundness or -

THE CHAIRMAN: Mr. Frawley has just said that he will tell us what he wants done later on.

MR. FRAWLEY: Probably it was a great mistake to divide this brief up. I did not do it on the basis of "divide and conquer".

THE CHAIRMAN: So long as you do not cover the same ground twice.

MR. FRAWLEY: We have certainly tried not to duplicate it. I thought that was the very purpose of breaking it up.

MR. EVANS: Your lordship asked Mr. Frawley a fair question, "do you want the words 'substantially similar circumstances and conditions' struck out?", and Mr. Frawley's answer was, "that may be".

MR. FRAWLEY: I find it very difficult to present my whole case in one, and I must do as the Commission directs and not as Mr. Evans directs.

THE CHAIRMAN: But you do not feel you are in a position to answer my question specifically?

MR. FRAWLEY: No, not completely now. Your lordship has asked us whether we want those words struck out.

THE WITNESS: We are not suggesting that those words be struck out, but that the phrase "passing over the same line or route" be amended. I do not know the exact words that were used, but we are not relying on -

THE CHAIRMAN: Q. Then we will be very happy to hear your proposition then. Is it in this brief?

A. It is in the brief that contains all our statutory changes.

THE CHAIRMAN: All right, Mr. Frawley.

MR. FRAWLEY: Q. All right, Mr. Darling?

A. Differences between standard class rates, town tariff rates in Eastern and Western Canada were left unchanged.

Similarly, the Mountain Differential was not removed. The interpretation of P.C. 886 by the Board in the 1927 investigation apparently turned upon two phrases to be found in the passages just quoted, viz: "to the fullest possible extent" and "under substantially similar circumstances and conditions". The former phrase would appear to have been taken to mean "to the fullest possible extent permitted by criteria already applied by the Board".

MR. O'DONNELL: I do not want to interrupt again, but we are speaking of an Order in Council, P.C. 886, extracts from which are cited here, and it occurs to me that it would be well that that whole Order in Council, and not just bits and pieces of it, should be put into the record as an exhibit, and also that General Order 488 which Mr. Darling has summarized should be likewise put into the record.

MR. FRAWLEY: I have no objection in the world to that.

THE CHAIRMAN: Q. Do not the three paragraphs on page 15 contain the whole Order?

A. No.

MR. FRAWLEY: We say "Three paragraphs of this Order in Council are of particular interest in the present connection".

THE CHAIRMAN: There is no trouble at all entailed in giving us the whole Order in Council?

MR. FRAWLEY: That is right. It is in the report of 3 C.R.C. page 131.

MR. O'DONNELL: And again at page 131 there is only an excerpt of that Order.

THE CHAIRMAN: You will bring it to us?

MR. FRAWLEY: I will have that typed out and filed. Let us give it an exhibit number now. It will be Exhibit 134,

Order in Council P.C. 886 of the 5th June, 1925.

<u>EXHIBIT NO. 134:</u>	Filed by	Order in Council P.C. 886
	Mr. Frawley	of 5th June, 1925.

(PAGE 11240 FOLLOWS)

THE CHAIRMAN: And it will be Order-in-Council what?

MR. FRAWLEY: P.C.886 of 5 June 1925, and then my friend adds that General Order 448 of the Board would have to be filed along with it. That also can be found in extenso at 17 J.O.R. & R. starting at Page 131.

THE WITNESS: This is at Page 294 of 17 J.O.R. & R.

Q: Page 294 the Order is reproduced, is it?

A: That is right.

Q: Then go on.

A: The former phrase would appear to have been taken to mean "to the fullest possible extent permitted by criteria already applied by the Board". This would still permit regional costs, traffic densities, and competition to determine general rate levels. the latter phrase necessarily brought into play the restricted meaning of unjust discrimination. Under these circumstances, it is not surprising that the Board found that the P.C.886 required no essential change in regulatory policy. In effect, this declaration of Government policy became no more than a directive to the Board to review its previous judgments to determine whether the same criteria would permit at that time a greater degree of equalization. In the case of branch line and main line rates on grain, the criterion of unjust discrimination was used to bring about equalization.

THE CHAIRMAN: Pardon me. I am sorry to interrupt again, but on that page, 15, you say the interpretation assumed two phases and then you raise one, namely, "to the fullest possible extent ..". Oh, those are the two, - "and under substantially similar circumstances

and conditions." Oh yes, then there is a quotation on the next page.

A: No, that is not a quotation, sir. That is our own submission.

Q: Those quotation marks make no difference then?

MR. FRAWLEY: That is the witnesses' interpretation, sir.

THE CHAIRMAN: It is very important not to be put into the mouth of the Board.

MR. FRAWLEY: Oh quite.

THE CHAIRMAN: And the quotation refers to what?

THE WITNESS: In the case of branch line and main line rates on grain, the criterion of unjust discrimination was used to bring about equalization. But equalization between regions could not be supported by any of the criteria recognized by the Board.

The fact that so little progress toward equalization resulted from P.C.886 emphasises the present need for changes in the statute itself if any important change in regulatory policy is to be accomplished. The Board is precluded from taking effective steps towards equalization unless clearly directed so to do by the Act. I might insert there, the fact that we are not implying by that statement that the Board's powers are limited in this respect. Otherwise the Board may be open to the charge of determining policy rather than carrying out a policy determined by Parliament.

MR. EVANS: May I get that straight? Did you say in reading that that you think that the Board's powers are not limited as regards equalization? Is that what you said?

MR. FRAWLEY: No, it was a comment on the words "the Board is precluded from taking effective steps towards equalization unless clearly directed so to do by the Act". Now the witness commented on the use of the word "precluded".

THE WITNESS: I don't mean that they are prohibited by the Act from using that power.

THE CHAIRMAN: You say the word "prohibited".

A: No, I was not changing the language, sir; I was just explaining the use of that word "precluded". The reason for the Board being precluded is in the following sentence: "Otherwise the Board may be open to the charge of determining policy rather than carrying out a policy determined by Parliament".

MR. FRAWLEY: Very well then, Mr. Darling.

THE CHAIRMAN: What do you want out of all that? Do you want the Board to have this power to add to the determining policy or to the contrary?

A: We wish the equalization, sir, to come by statute as a sort of embodiment of Government policy which the Board would then administer.

THE CHAIRMAN: The Board would have nothing to say about -

A: Of the equalization to the extent which we propose. We do not say that all rates are subject to equalization, of course, but those rates which we say should be subject to this principle. We think that should come by statute rather than by some construction of the Board's power.

Q: Are you able to put into writing what rates you think should be governed by a principle and what ought not? Is that what you intend to do?

MR. FRAWLEY: I think so, sir, and to some extent

we have done that. Very well, then Mr. Darling.

A: Section E. The regional discrimination issue in the United States. Several features of the efforts to obtain regional equality in freight rates in the United States offer interesting parallels with those in Canada. Essentially the same problem was encountered in that the existing definitions of "undue or unreasonable preference" in Section 3 of the Interstate Commerce Act had been restricted to apply to personal discrimination alone, and that personal discrimination is the term as we have been using it.

THE CHAIRMAN: Is it used at all in the judgments of the Board?

A: I don't think it is recognized as such there.

MR. EVANS: It is your own definition?

A: That is right.

Q: You have found no other definition exactly the same as yours?

A: It is merely a name for a number of different discriminations and we have taken that as the collective. Efforts of the Interstate Commerce Commission on its own initiative to widen the definition were defeated by the Courts. Section 3 had provided that undue or unreasonable preference should not be given to any particular person, company, firm, corporation or locality. The United States Supreme Court found in *Texas and Pacific Railway v United States* (1933) 289 U.S. 627, that ports were not localities within the meaning of the word as used in Section 3. The section was therefore amended by Congress in 1935 by the addition of the words "port, port district, gateway, transit point". In the Transportation Act of 1940, a more determined effort was made to establish a concept of regional discrimination. At

the same time, Section 3 of the Interstate Commerce Act was again expanded, this time by the addition of the words "region, district, territory", which was clearly intended to enable the Commission to attack the problem of differences in regional rate levels. Section 5(b) of the Transportation Act of 1940 was even more explicit. The only phrase that I would call attention to particularly in that is in line four of the citation. It calls for "investigation between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water --".

MR. EVANS: The fourth line where?

A: Of the first quotation on Page 17:

"The Interstate Commerce Commission interpreted these amendments and additions as laying down a definite policy for the removal of regional rate differences. In Class Rate Investigation, 1939 (1945) 262 I.C.C. 477 at page 692, the Commission said"

And then follows the quotation which I will read:

"It is clear that the main purpose which Congress had in mind was to bring about a greater degree of equalization, harmony, and uniformity in the different regional or territorial rate structures of the country. The method employed to accomplish this purpose is equally plain. By the amendment to the substantive anti-discrimination provisions of Section 3 (1) all discriminations in the form of undue or unreasonable preference or advantage, or "

undue or unreasonable prejudice or disadvantage, as between regions, districts, or territories, viewed as separate entities, were brought directly within the purview of the act along with all the other inhibitions previously included. We were then authorized and directed by the other provisions mentioned to remove any such discrimination found to exist in the proper proceeding."

THE CHAIRMAN: You say "all discriminations in the form of undue or unreasonable preference or advantage"?

A: Considered collectively, sir, as one reason opposed to the other.

In support of this interpretation the Commission cited the explanation to the Senate, May 22nd, 1939, of Chairman Wheeler of the Senate Committee on Interstate Commerce concerning the amendment to Section 3. And I won't read this particular citation other than to remark that the intent of this amendment was very clearly to produce the equalization and to so amend the Act that it would result.

The Interstate Commerce Commission's decision in Class Rate Investigation, 1939, prescribed uniform class rates within and between all rate territories with the exception of Mountain-Pacific. The latter territory was not considered in the investigation and the uniform rates prescribed, I might add, are not yet in effect. This decision was upheld by the United States Supreme Court in *State of New York v United States* so that the concept of regional discrimination can now be said to be firmly established in the United States. We do not mean by that that there is mile for mile equalization. We do

not mean that the concept is firmly established; we mean that it has become part of one of the tools of the Interstate Commerce Commission.

Q: It says "discrimination in the form of undue or unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage". That is the kind of discrimination that is to be removed?

A: That is right.

Q: But only that kind?

A: That is true, sir, with the exception that in the proceedings of ^{the}Class Rate Investigation, the undue and unreasonable preferences were considered collectively one region as opposed to another, and also I think the attitude of the Commission on its decision was that there should be some justification for existing differences and if it could not be shown that the existing conditions justified those differences they should be removed, and in the decision the Commission found that the differences were unjustified as between eastern, southern, and western territories, and ordered equalization.

Q: Now then, you would favour a similar procedure in Canada?

A: No, I think the intent of citing this American experience, sir, is to show if equalization is to come most effectively it must come by some amendment to the statute. The Interstate Commerce Commission has been ahead of the courts in that respect.

Q: I am only trying to find out just how you want the Act amended?

A: Well, we deal with that at a later point, sir, in the other brief.

F. Equalization and Regional Transportation Conditions.

MR. FRAWLEY: You say this summarizes this section

of the brief?

A: Summarizes the section of the brief and also states the qualifications which we would leave open in the application of equalization. The demand for rate equalization has in its aim the removal of many regional rate differences in Canada. The chief grounds for this demand are the following:

- (1) The existing differences have not been arrived at in any consistent manner, but are largely historical in origin.
- (2) The relating of rate levels to regional costs and traffic densities does not recognize the organic relationship of the different parts of a transportation system to the whole.
- (3) Differences in regional costs and traffic densities are not adequate standards by which to determine regional rate differences. Revenues and investment must also be taken into account.
- (4) Competitive conditions of earlier periods should not influence the levels of class rates today. Competition may be met by the publication of competitive rates lower than the normal level.
- (5) For reasons of national, economic and social policy it is desirable that rate equalization be as thorough as possible. By themselves, neither differences in regional costs nor general competitive conditions afford sufficiently sound grounds for departures from a general level of equality.

THE CHAIRMAN: Now, just a moment please. Take that Section 3 "Differences in regional costs and traffic densities are not adequate standards by which to determine

regional rate differences. Revenues and investment must also be taken into account." You would have the Board take into account revenues and investment?

A: Yes.

Q: Investment in the locality and revenues likely to come from the locality?

A: Yes, and any investments of the system properly allocable to that locality.

Q: You mean of the railway system?

A: Yes.

Q: Then it says "revenues and investment". You say that should mean "railways revenues and investment"?

A: Yes.

Q: Only?'

A: Yes sir. There remains the problem of setting the limit to which rate equalization should be carried. The advantages of rate equalization from a social and economic standpoint would be considerable to the country as a whole. Nevertheless we do not suggest that they should outweigh at all times such natural advantages in transportation conditions which particular regions may possess. While we take exception to any suggestion that the rate structure as it stands is the effective measure of any regional advantages or disadvantages as may now exist, we are not opposed in principle to permitting these advantages to be reflected in general rate levels in some fashion.

By way of explanation of what is meant in that paragraph, the following paragraph details the conditions which we would recognize as justifying a departure from complete system equalization.

The index of such regional advantages should be the regional operating ratios, including an allowance for the investment in each region. In comparing the ratios for two regions, small or fluctuating differences should not warrant any departure from equalization. It is also important that full allowance be made for the organic relationship of each region to the system as a whole. Otherwise one region may be unduly advantaged by virtue of the revenue and traffic developed in other parts of the system. However, if over a reasonable number of years there is maintained a consistent difference in earnings ratios - and that term refers to the ratios referred to in the second line of that paragraph - in earnings ratios between regions, in the sense we have just indicated, a difference greater than could be attributed merely to temporary fluctuations in traffic or to the positions of the regions within the system, then some degree of departure from equality in the general level of class and non-competitive rates might be considered. Such a difference might be regarded as some indication of the transportation advantages enjoyed by a region, over and above the advantages accruing to it from its relationship with other regions in the system.

The advantages of this method of reflecting advantages in transportation conditions are that it would avoid the misleading exaggeration of regional advantages measured by a standard of regional costs alone.

We mention that only to point out that rates in Pacific territory for many years were already 50% and then 25% higher than in prairie territory on the basis of regional costs, whereas this difference, while

the difference in costs may be considerable, the difference in net revenue or in the operating ratio may be fairly small, the revenues offsetting the costs.

It would recognize that differences in the consist of traffic in different regions may produce approximately equality in earnings at a common level of rates, although there may be wide differences in unit costs and traffic densities. It would also recognize the existence of a zone within which the regional earning ratios may fluctuate without warranting a departure from rate equalization.

(Page 11260 follows)

MR. FRAWLEY: Q. Passing to Part III of your brief, would you just explain the purport of this part of your brief?

A. Part III of the brief deals with the effect on the rate structure of the application of the equalization principle which we proposed at the beginning of Part II on page 3. We deal first with the class rates and in Part B commodity rates. In Part A, dealing with class rates and called A Uniform Scale of Rates.

The present standard and distributing class rates in each territory should be replaced by a single scale of class rates based initially on Ontario-Quebec town tariff rates and applying within all rate territories. This scale should also apply as a maximum for class rates between Eastern and Western Canada. By this means the dual system of class rates would be replaced by a single scale of class rates, and the discrimination resulting from the restricted application of distributing and town tariff rates would be removed. The selection of the town tariffs as the base is governed by the fact that they have served as normal class rates in Ontario-Quebec territory for over 40 years. Unlike Prairie class rates they were not initially placed at a higher than normal level to offset light traffic density. Prairie class rates still show the effect of these early conditions.

I do not propose to read the section illustrating the general application of town tariff rates, but will continue on page 22.

Q. You did explain as to distributing rates in Eastern Canada and the extent to which Western distributing rates apply?

A. Yes.

The application of the town tariff in Eastern Canada is more widespread than that of the distributing rates in Western Canada because of the numerous town tariff points concentrated within a relatively ^{small} contact area and because of the two-way application of the rates.

The dual system has been defended in the past by pointing out that the distributing rates (including the town tariffs in that term for convenient reference) have been extended to apply wherever traffic movement of any considerable volume were offered. The burden of the standard rate has been minimized by the claim that only small or occasional traffic movements are charged such rates. Whenever traffic volume warranted, it has been claimed, the railways have published distributing rates.

Q. What do you have in mind there when you say "claimed"?

A. Statements to that effect were made by both Mr. Evans and Mr. Sinclair of the Canadian Pacific in Volume 12 pages 2220 and again at pages 2221 and 2234.

In this way, by far the greater part of the class rate traffic moves on distributing rather than standard rates.

A class rate structure of this type involves an element of volume discrimination which should have no place in such a rate structure.

Q. Perhaps, you should explain what you mean by volume discrimination?

A. I might refer to the bottom of page 28 and on page 29: By volume discrimination is meant the familiar practice of charging lower rates for a large volume of traffic. This may be done in a number of ways: (a) by assigning a commodity to a lower class in the

classification, (b) by giving commodity rates in place of class rates on certain movements in place of class rates, (c) by giving a lower rate for a carload than for a less-than carload shipment, (d) by giving lower rates for larger minimum carloads, (e) by giving lower commodity rates than normal commodity rates. I might add that we do not oppose volume discrimination one hundred percent, nor do we say that the reason different methods of making a rate are entirely due to the effect of volume discrimination.

Q. You say that volume discrimination should not have a place in the rate structure?

A. This type of volume discrimination. The class rates are the basis of the rate structure, being the rates applicable in the absence of conditions justifying commodity rates.

Q. On page 22 you say, "a class rate structure of this type involves an element of volume discrimination which should have no place in such a rate structure." Will you elaborate on that?

A. I think that ^{the} ~~the~~ passage which follows gives/reason for that. The class rates are the basis of the rate structure, being the rates applicable in the absence of conditions justifying commodity rates.

THE CHAIRMAN: Q. That is the case?

A. That is the case now, sir.

Q. That is the case in your view?

A. The case is simply that the distributing rates apply from some two dozen cities in Western Canada.

Q. You are referring to distributing rates?

A. Yes.

It cannot be too strongly emphasized that the reasonableness of a rate must be determined by its relationship to other rates and not from the examination of the absolute benefits or disability involved. On class rates, in particular, it should be a matter of indifference whether one carload or a thousand are involved, unless it be frankly admitted that the larger centres and the larger shippers, in addition to the many other advantages accruing from their size alone, are also to receive preferred treatment in freight rates. Equally relevant is the assertion that the relatively small amount of monetary disadvantage involved will excuse the lack of distributing class rates at small stations. This presupposes that a line can be drawn to distinguish negligible disadvantages. This could only mean that the larger centres have some inherent right to more favourable rates.

The railways are not obliged to publish distributing or town tariff rates except where the Board has found that their failure to publish them has resulted in unjust discrimination. But even where discrimination has been found to exist the result has not always been the extended application of distributing rates. Then we refer to the Town of St. Coe Case.

The matter of extending the application of distributing rates has been left largely to the discretion of the railways, upon the assumption that their self-interest in this matter would coincide with the public interest. The historical condition in Eastern and Western Canada which led to the establishment of the lower class rates have thus been treated with a difference which is clearly unwarranted. Early conditions have been permitted

to congeal into permanent advantages.

The chief objections to the dual class rates system, i.e. the use of both standard and distributing rates within the same territory, are the following:

- (a) The system tends to be inflexible in that the list of town tariff or distributing is restricted. Often unnecessarily difficult and unjustifiable conditions are imposed on any town seeking to obtain the privilege of using distributing rates.
- (b) The distributing points have an advantage on all class traffic and not merely on those commodities which move in considerable volume.
- (c) The system places difficulties in the way of the growth and industrial development of smaller centres while at the same time favoring the concentration of economic activity at the privileged points.

In Summary, there are no persuasive reasons why this original difference in treatment should remain permanently incorporated into the rate structure. It adds to the disadvantages of the smaller centres and the shippers of small volume, which are already sufficiently great by reason of their weaker bargaining power and the differences between carload and less-than-carload rates. All points should be entitled to the same level of rates.

THE CHAIRMAN: Are you asking that distributing rates be abolished entirely?

MR. FRAWLEY: No, sir.

THE CHAIRMAN: Q. Or that the system of town rates be put into effect in the West?

A. We are not asking that the distributing rates or rates approximating that level replace the standard rates, which apply universally.

Q. Then what you mean is that the standard rates would be lower than the distributing rates?

A. That would be the case.

Q. This is a general application for a decrease of rates in that ceiling?

MR. FRAWLEY: In the ceiling rates.

THE CHAIRMAN: To what the present distributing rates are?

MR. FRAWLEY: That is what it amounts to.

MR. EVANS: The difference between us is very simple. Mr. Frawley's clients want an equalization of the class distributing rates.

THE CHAIRMAN: Q. Where do the class rates apply? I am talking about the future; what would be the result?

A. The standard rate would now apply where it now applies, but it would be equalized and the distributing class rates would be equalized East and West.

Q. In the East you call them town tariff rates?

A. Yes..

Q. It is the same thing?

A. Yes.

Q. Is that what you want?

A. We propose a single set of class rates and I understand they advocate that both rates have effect but equalized.

MR. FRAWLEY: Q. This matter of inter-territory class of rates is of considerable importance to us. These are the rates that move the traffic from East to West and we have a submission to make as to what should

happen to those rates?

A. Yes.

THE CHAIRMAN: You say from East to West.

Would it also run from West to East?

A. Yes. At the present time the straight mileage class rate scales apply within Eastern and Western Canada but a different system of class rates is used for interterritorial traffic between Eastern and Western Canada. The latter rates consist of two factors, the Eastern factor being an "arbitrary" applying to Fort William. That, I might say, is shown in the first row of the Table at the bottom of the page for each class. The Eastern arbitrary to Fort William is \$1.68 for first class, but these rates do not include the 8% increase. The latter rates consist of two factors, one being mileage; that is to say that the distance from Fort William to Winnipeg is reduced 130 miles and the rates are calculated on that reduced distance. We have the case that the arbitrary from Montreal to Fort William which is here at \$1.68 would be the equivalent to the Eastern standard rate.

THE CHAIRMAN: Q. You are using the word "arbitrary"?

A. Yes, that is the constant from all points from the East to Fort William.

Q. Does it apply to all rates to Montreal?

A. The arbitrary is the factor used in making up the rate from Montreal.

Q. Would that be the case of a shipment that leaves Montreal to go to Fort William and not farther?

A. No, that would not be it.

Q. If it goes farther West you call the rate an arbitrary?

A. Yes, it is merely the consideration of a rate, but it is not a rate.

MR. EVANS: It is the something as a Maritime rate.

THE WITNESS: The two factors in the class rates from Eastern Rate Groups A and B to Edmonton and Calgary are as follows:

MR. FRAWLEY: Q. Is there anything else you want to call attention to there?

A. Yes, in Appendix D we illustrate the effect of this system of rates between Eastern and Western Canada on page 55 and 56. I think I might just read the next paragraph before referring to Appendix D, starting at the top of page 25: The effect of this method of rate construction on rates to Western Canadian points varies considerably from the rates that would be charged on the basis of through mileage. The advantage of the two-factor rate over a through mileage rate based on the Prairie standard scale is greatest at Winnipeg and decreases gradually as one moves westward until in western Saskatchewan and Alberta the advantage disappears. I would like to refer to what we have done by way of comparison on page 55. We have the figure in the column (2) the actual mileage from Toronto to these various cities in Alberta shown opposite in column (3) and the present rates made on the basis of what was said at the bottom of page 24.

Q. You are speaking of fifth class rates?

A. That is so.

MR. EVANS: Q. A Fifth class Prairie standard?

A. At column (3) these present fifth class rates now apply. By way of comparison then, we see what the result achieves as calculating the rates as a single

factor using the actual mileage from a large Eastern point to Western Canada and to use a rate group instead of an arbitrary we have used what might be called a mileage arbitrary. We have taken the distance of 900 miles as a constructive distance from points in Eastern Canada to Fort William and have added to that the actual mileage from Fort William to destination. To those mileages which are shown in column (4) the rates that would be chargeable on the maximum standard rates in Prairie territory add to the difference between these rates and the present rate is shown in column (6).

MR. FRAWLEY: Q. I think you should take one of them and go through and show us what you mean?

A. I take the first by way of illustration at Lloydminster, the actual mileage from Lloydminster to Toronto is 1858 miles and the present fifth class is 221. Using the assumed mileage which we have taken for the purpose of comparison of 1942 miles, we have an applied rate that would now apply for movement within Prairie territory.

Q. You say that 1942 is arrived at how?

A. By taking the distance from Fort William or Armstrong, as the case may be, to Lloydminster and adding to that 900 miles. The first column is the actual distance.

THE CHAIRMAN: Q. From Toronto to Lloydminster?

A. That is right, sir.

Q. In that case you are not counting the 900 miles?

A. We are showing the present mileage to the present rates.

MR. FRAWLEY: Q. Columns (2) and (3) present the mileage and rate. In other words, it is actually 1858 miles from Toronto to Lloydminster and the fifth class

rate from Toronto to Lloydminster is 225?

A. That is right.

Q. When you come to column (4) it is 1942 miles because you assume that the originating point was exactly 900 miles east of Fort William?

A. Yes.

Q. You have worked that out?

A. Calculating the rate that would apply on that movement haul within Prairie territory to a point as far east as Sudbury and we arrive at a rate of 225. In this case the difference as between our comparison is 4 cents. The present rates are 4 cents lower in arriving at it by using this method. However, as you move westward the difference increases until, in Alberta, at Lac la Biche, Grande Prairie and Dawson Creek the difference is 40 cents and 35 cents. This is shown in the map Appendix D on page 56. I hope that map is clear enough, sir. It was done in colors to make it clear.

THE CHAIRMAN: What page is that?

MR. FRAWLEY: Page 56.

THE CHAIRMAN: It is almost invisible.

MR. FRAWLEY: I think if you would lift it off the next page it is a little clearer.

THE WITNESS: The vertical lines in blue ink represent equal rates where the present rates of the through mileage rates which we have compared with them produce the same rate for the first six classes of the classification, each line representing a rate for one class of the classification. In other words, whereas in these vertical line rates based on through mileage are less than the rates now in effect. You will see from this that III and IV have the whole Province of Alberta, practically speaking, except for a corner in the southeast

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producing higher rates than would be made by through mileage. For the V and VI classes the dividing point is farther west but still the bulk of Alberta and all of British Columbia is in an area of higher rates.

MR. FRAWLEY: Will you come back to the brief, now?

A. Reading at page 25, starting at the sentence on line 7:

(Page 11277 follows).

West of these lines the present system produces rates that are higher than Prairie standard scale for the same distance, or rates derived from a reasonable extension of that scale above its present limit of 2,200 miles. Some of the distances we used were more than 2,200 miles. We were forced to assume that the scale had been accepted in the same rate that it had at 2,200 miles.

The above comparison demonstrates the fact that since the organization of the present system of inter-territorial class rates all class traffic between Eastern Canada and Alberta and British Columbia has actually been charged a higher level of rates than the maximum rates authorized for traffic within Western Canada, i.e. the Prairie Standard Class Rates. Insofar as Alberta and British Columbia are concerned no benefits are derived from the low Eastern arbitraries to Fort William and none from the deduction of 130 miles in the Fort William Terminal rates. Both these features in the interterritorial rates have been (and that should read "held up") as compensating features for the long haul across the "bridge" territory from Sudbury to Winnipeg. This may be the case insofar as Manitoba and the eastern part of Saskatchewan are concerned. It can hardly be denied that the present system is distinctly prejudicial to Alberta.

MR. FRAWLEY: And eastern British Columbia also:

A: Yes.

Q: At this point I would like to call the attention of the Commission to the 21% Case because the brief says that these features in the interterritorial rates have been held up as compensating features for the

long haul across the "bridge" and the reference, sir, is to Page 62 of the pamphlet copy of the 21st Judgment which reads:

"The water competition extends throughout Eastern Canada from its eastern coast to Fort William and Port Arthur. These compelled lower rates have resulted in benefit to Western Canada for the reason that traffic moving between Eastern and Western Canadian points obtains the benefit of such lower eastern rates for the portion of the haul within Eastern Territory, with the result that rates to and from points in Western Canada far removed from the water obtain the advantage of the compelled rates for the Eastern portion of the haul".

THE CHAIRMAN: Doesn't that just say though that you get the advantage of the rates for that part of the transit in Eastern Canada?

MR. FRAWLEY: That is true, they say we get the benefit. Now, we have demonstrated that geographically when you are as far west as the Alberta border it has been lost.

THE CHAIRMAN: But you see that 130 mile deduction, for instance, between Winnipeg and Fort William, the Board does not say there that you are getting the benefit of that. There it says that the benefit you are getting is in the eastern portion only because they are a part of the total rate today after all, and so far they are below standard; otherwise, your rates would be higher.

MR. FRAWLEY: No sir, we say that if they were

on the same scale of rates, but we never have within the prairie region.

THE CHAIRMAN: Yes, I think I see your point.

MR. FRAWLEY: I am only being critical of those.

THE CHAIRMAN: Take the one element of that which is the fictitious mileage between Fort William and Winnipeg. It takes off about 120 miles.

MR. FRAWLEY: 130 miles.

THE CHAIRMAN: Well, are you going to suggest, as has been suggested to us, that those 130 miles should not taper away but should be carried on all the way through the West?

MR. FRAWLEY: Mr. Darling will be dealing with that, sir. We do not say that will be taken out. We simply say that by applying a proper tapering principle we should get some benefit from that.

THE CHAIRMAN: Where do you propose that - in this brief or later on?

MR. FRAWLEY: I am sorry, sir.

THE CHAIRMAN: Where do you formulate that proposal?

MR. FRAWLEY: I heard you, sir, but at the moment I am not able to say whether it is in this brief or the Regulatory Brief. All right, Mr. Darling.

THE WITNESS: The point of the quotation which was contained in the Board's Judgment is rather of interest, it seems to me, in two respects in that, in the first place, there seems to be a general impression that all of Western Canada is now receiving some compensation for the long haul by reason of the present rates which produce a low arbitrary to Fort William, and the second thing which seems of significance to us is that it seems to be generally agreed that such compense-

tion is just and reasonable to offset the effect of distance. Even though we thought to have this advantage, nobody suggests that there is anything wrong with having that advantage or suggesting that it should be removed. What we are asking for then is, even if our proposal here is accepted, would be, as far as Alberta is concerned, merely the obtaining of the maximum scale on rates between Eastern and Western Canada, which, as we point out, would be lower than the rates which are presently charged.

At the same time, all Manitoba and most of Saskatchewan would have still some advantage from the East-West rates inasmuch as they are East of this point of equal rates as shown in our diagram. In other words, unless there were some further compensation in the form of the tapering of rates, we would just be paying the maximum rates and points further East would be paying something less than that, but in no case are we now receiving a benefit from the present class rates as now constructed.

MR. SINCLAIR: I wonder if I may be clear on that. Is it your suggestion that the mileage rates apply in Manitoba and Saskatchewan as well as in Alberta on East-West movement?

A: Which mileage rates?

Q: Standard mileage rates.

A: No, the same basis as all of Western Canada.

THE CHAIRMAN: What was that you said?

A: I think the question was, sir, that the -

Q: You had better ask it again.

MR. SINCLAIR: I was wondering just what he meant by that. He said that where the maximum of the through mileage rate was lower, as it was in Alberta, that that

would apply but that some other basis of rates would apply East of Manitoba.

A: All I said there, Mr. Sinclair, was that in Manitoba and Saskatchewan the present rates are now lower than what would be derived by using through mileage. The dividing line is shown on the map there.

Q: Then you don't want to have the same basis of making rates applied in Manitoba and Saskatchewan as you have in Alberta?

A: Well, the way we have put it is that the uniform scale should be a maximum for that system of making rates, and wherever the present system produces higher rates than standard class rates, we say that the standard class rates should replace those.

MR. FRAWLEY: All right then, go on.

A: The significance of the comparison of these two-factor rates with Prairie standard rates should not be overlooked since this comparison will show the present class rates in the most favorable light. A more adequate standard by which to judge the present East-West class rates would be to use the Western distributing or the Eastern town tariff scale for comparative purposes. If this were done the lines of equal rates would obviously fall a considerable distance east of their position as shown in Appendix D.

The change in the rate structure to remove this disadvantage need not replace entirely the present basis of making interterritorial rates. The use of this basis could be continued, provided that the through rate on the new uniform class rate scale in all instances be used as a maximum.

I do not propose to read the rest of that section. That merely explains the method which we have used and

which we say might be considered as the proper method to be applied in making rates in the future.

THE CHAIRMAN: I notice you do not wish to discard the present Eastern rate. You do not ask to have the present Eastern rates discarded. You say "there would be no necessity to discard the present Eastern rate ..."

A: No sir. What it amounts to, as I mentioned before, was that it means the substitution of a constructive mileage instead of the rate arbitrary as far as Fort William. Turning now to Sub-Section (3) "Rates on international traffic in Western Canada".

MR. FRAWLEY: Now, Mr. Darling, why do you deal with the rates on international traffic at this time. We are still dealing with class rates, I take it?

A: Yes.

Q: And that is why these rather separate matters are discussed here?

A: Yes. The reason for that is that at the present time on international traffic entering Canada at any of the Western Gateways, the Prairie Standard Mileage Rates are charged, and we point out here that if our proposal is accepted that a uniform mileage scale based somewhere near the distributing rate level is adopted, this particular grievance would be removed automatically and, therefore, we have not expanded upon that but merely have pointed out that even if that were not obtained in any event the rates that apply over these points should be the distributing rather than the standard rates.

Q: You call attention on Page 26 to the volume of traffic. There is just a sentence or two there you might usefully read "In spite of the volume of traffic..?"

A: In spite of the volume of traffic which moves to and from the border gateways in Prairie territory,

These points are not classed as distributing points, so that distributing class rates cannot be used except when published as commodity rates. This traffic is the only important traffic in Western Canada which still is charged standard class rates. It includes many articles essential to the Western economy including agricultural implements, coal-mining machinery, oil-well drilling equipment and supplies and other machinery and manufactured articles. I might briefly note that in Appendix E we show the difference in rates that would result from the substitution of distributing rates for standard rates over the four principal gateways to six Western cities.

THE CHAIRMAN: The Board would have power now to do what this suggests, wouldn't it, Mr. Frawley?

MR. FRAWLEY: To make the border gateway a distributing point, I suppose it has.

MR. SINCLAIR: Certainly it has.

MR. FRAWLEY: My friend said "certainly" so I suppose that is right.

THE CHAIRMAN: Has the Board ever been asked to do it?

MR. FRAWLEY: I don't know, sir.

THE CHAIRMAN: I am only asking you to bear in mind all the time that indirectly you are asking us to propose legislation which would remedy things you are suffering from.

MR. FRAWLEY: Yes sir, but it probably comes back to something I said the other day. Apart from legislation I just use this as an example. If the Board should be impressed with the fact that farm machinery coming from the large manufacturing concerns of Illinois - and as your Lordship knows, many many thousands of tons

come into Western Canada every year - if the Board would be impressed with the fact that that machinery when it reaches the border proceeds at commodity rate under which it has travelled in the United States and then carries the maximum rate, the highest rate in the book, to get to its destination, if your Lordship is impressed with that that it does not seem to be a desirable thing -

THE CHAIRMAN: That is what I asked you. Is it not within the power of the Board to change that according to your circumstances? Have they been asked to change it and refused?

MR. FRAWLEY: No, I don't know, sir, but I was going on to say that if your Lordship would say that in his report, that that seems to be an undesirable situation and said no more than that, that I submit would carry great weight in the ultimate disposition of these matters that we have to come to the Board with. So many times you have asked me if we have been to the Board and I have to say "No, we have not been to the Board" but that does not preclude us from obtaining a favourable recommendation from this Commission.

THE CHAIRMAN: Well, you see, you must read our Commission and you will see there that we are asked to suggest amendments to the Act which would guide the Board.

MR. FRAWLEY: Well, my Lord, perhaps there will be a time to argue the scope of the Order-in-Council.

THE CHAIRMAN: You must at least be careful and we, in our turn, shall have to be careful that we are simply pointing out to the Board that they ought to have done this ^{not that} and they should do this and that. You see the difference?

MR. FRAWLEY: Yes sir, but probably this is something that is in the hands of the railways. I think

the railways are well aware of what they have done there. I think they are satisfied with it and they want to continue it, and I think that this sort of thing is not desirable. If this Commission pointed out that, and then if someone went to the Board later, that would carry such an applicant a long way towards getting the proper type of relief from the Board. I was going to say there that I have rather strong feelings on this question of the American tariff situation, and when argument time comes I will present to the Board this thought, sir, that the railways are meddling a little bit in the fiscal policy of this country when they seek to put a barrier against the receiver of American farm machinery in Western Canada. Why should that rate at the border suddenly change its character and then be assessed the highest rate in the book, as if the machines were taken off and put on the border and then started on from there again?

MR. SINCLAIR: Surely, Mr. Chairman, if Alberta has a complaint to make about the rates that are being charged on agricultural machinery or on any other commodity through border gateways they should make their complainant to the Board and let the Board go into all the facts and then make a finding. If then they find they are not satisfied because the Board is not impressed with their argument, that is another point, but to come here and to ask for broad directives consistently without any reasons for change in legislation, I submit puts the railways in a rather difficult position. The Board has jurisdiction to hear this complaint, if it is a complaint. My friend talks about class rates. There are through commodity rates in some instances into Western Canada, and this has been -

MR. FRAWLEY: From where?

MR. SINCLAIR: From the United States.

MR. FRAWLEY: On farm machinery?

MR. SINCLAIR: I said on some commodities.

MR. FRAWLEY: Tell us what they are.

MR. SINCLAIR: Look up the tariffs and you will find them. Now, I would suggest, Mr. Chairman, that for us to understand the case that they are putting forward, and that this is the main requirement, I would think that it would necessitate suggesting that legislative changes are necessary to bring about the relief that he asks.

MR. FRAWLEY: My Lord, I am really obliged to my friend because this point might just as well come up now as later. Certainly I am under a very serious misapprehension as to the function and scope of this Commission if it could be that there could be no recommendation pointing out the situation in regard to class rates in international traffic entering Western Canada, and as I read this Commission, you are to inquire into the disadvantages which affect certain sections of Canada by transportation difficulties and by certain anomalies which are said to be found in the existing tariffs on tolls and rates and I would have to say in many, many instances "Oh yes, I can take this to the Board". Well, first of all, how could I take it to the Board? I wonder if my friend has perhaps got some hidden meaning in that. I am here representing all the people of the Province of Alberta before this Commission. Whom would I represent if I went to the Board? That is perhaps something else that is lacking. If I was counsel for the A.B.C. Farm Machinery Company of Calgary, or Mr. Smith who imports one, or Mr. Jones who buys one, I would, but I am not counsel for Mr. Jones;

I am counsel for the Province of Alberta, and represent all the shippers and receivers of the Province. I do not know how I would have the opportunity to go in and discuss this particular anomaly in connection with these class rates, and I do say, that even if I have to admit that "Yes, the Board could do this" the fact remains that for years and years the railways have been, shall I say, allowed to do it. And let me add, perhaps without any protest, by the consumers. Did not Mr. Moffat say, talking about the uninformed public -

THE CHAIRMAN: Who was talking about it?

MR. FRAWLEY: Mr. Moffat, I remember, talked about the uninformed general public that had no access to experts and counsel and that sort of thing. But I am glad to have an opportunity of stating my views on just this particular - not small, but this special matter, because I do think I am entitled to ask this Commission for a recommendation just saying nothing more than this "We have heard about the way the international class rates are made up. We think that having in mind some of the things we are talking about - the volume of the traffic, the importance of the commodity - that there is no reason for this sort of thing". Coutts is on our international border at the Montana line. We find that the class rate from Coutts to Calgary is .62¢. From Calgary to Coutts, because Calgary is a distributing point, the rate is .51¢. That is the kind of thing I am talking about. If Coutts was made a distributing point, it is as simple as that, but it is not a distributing point and one would have to go to the Board and have it made a distributing point. And let us not be deprived of the great benefit that comes and is expected and hoped to come to the whole people of Canada

from the deliberations of this Commission by simply being able to tell my friend that I go to the Board and it did that. Frankly, that is no disposition, sir, of the many, many anomalies which we are entitled to point out to the Commission, and this I say is one, and it is true that the Commission is asked to recommend changes in legislation.

"Any feature of the Railway Act that might advantageously be revised or amended in view of present day conditions"

But surely there, when you look at the general of the provisions/Act, I say surely I am under a disadvantage because the Parliament of Canada tells me I can buy my farm machinery in Illinois if I want to, rather than in Brantford, Ontario. Now, when I look at the nature of what the rate is to be coming from Illinois, I find there is a distinct disability against me, I say virtually a customs tariff over machines that are imported from Illinois by virtue of this peculiar way of making up the rate structure.

MR. SINCLAIR: The Canadian Railways will apply the American mile for mile rate tomorrow if he wants it.

MR. FRAWLEY: And the Canadian Pacific Railways say, in so many words, sir, at Page 105 of part C, what they think about those rates I have been talking about, and they say "There is no valid reason why the same distributing basis should be granted to merchandise entering Canada from the United States. In many instances (this is the section) such merchandise is in direct competition with similar goods produced at points in Canada". Granted that they are. Is it the business of the Canadian Pacific Railway to worry whether it is competition with the goods produced in

Brantford, Ontario, and to make the Province of Alberta suffer by imposing another duty upon the farmer that may buy his machinery in the United States? Then we find we are assessed at the highest tariff in the book.

MR. SINCLAIR: We will still take the American rate mile for mile.

MR. FRAWLEY: I am not here discussin details with my friend. I am discussing the principle I say is an undoubted kind of discrimination.

MR. SINCLAIR: You have got a bargain now, and you don't know it.

MR. FRAWLEY: That is what I have to say about that.

THE CHAIRMAN: Your recommendation was that either we do something by recommendation of legislation or something else to remedy the situation that you now complain of?

MR. FRAWLEY: Yes sir.

(Page 11294 follows)

THE CHAIRMAN: I hope you won't forget later on that you have now argued most efficiently the case from your point of view. I do not know that we need to hear much more argument from you about it.

MR. FRAWLEY: I will promise to remember what I have said.

Q. Then, passing now from the general subject of class rates to commodity rates, Mr. Darling, on page 27?

A. B. Commodity Rates and Volume Discrimination - With regard to commodity rates the equalization principle would require, in the absence of conditions permitting exceptions, e.g. competition:

(a) General commodity mileage scales should be uniform in **all** regions for each commodity.

As we understand it, this proposal is similar to that offered by the Canadian Pacific in broad lines.

(b) Specific commodity rates - and by that we mean rates published just once to a particular point, and not as a mileage scale of general application - should be based on formulae which should be uniform in all regions for like commodities.

THE CHAIRMAN: You mean, the rate that exists between two localities?

A. Well, it might be a rate on canned goods, say, from Lethbridge to Edmonton and published as such.

Q. And when that is done, you say then that those rates should prevail all over?

A. No, we say that these rates are derived by various means and not always by formulae at present, but that such formulae should be uniform, that is, if the commodity rates on canned goods not subject to competition or other exceptions were 40% of the first class rates, that should be the basis in arriving at these rates

when and where they are published in different parts of Canada, as an example.

THE CHAIRMAN: You mean, it must always be in the same percentage?

A. On the same commodity, barring the absence of conditions like competition. As we understand it, this proposal is in part subscribed to by the Canadian Pacific but not in full. I believe their position is that where these formulae in relation to class rates now exist, that they would be equalized, but not otherwise.

(1) General Commodity Mileage Rates

The general commodity rates include those rates which are published in the form of mileage scales, or as point-to-point rates to or from all stations within a territory. The point-to-point rates themselves are usually based on a mileage scale, although the scale may not be published in the tariffs. General commodity rates may apply (a) between all stations in a given area, (b) from certain specified points of origin to all stations in a given area, or (c) to certain specified points from all stations in a given area.

At the present time commodity mileage scales in Western Canada and Eastern Canada are not uniform. For certain commodities the scales are approximately the same in both territories: e.g. logs for manufacture, fertilizer, coal (Alberta and Eastern British Columbia). The Prairie territory scales are lower for potatoes, pulpwood for manufacture, coal (Saskatchewan), sand and gravel, building brick, drain tile. Eastern commodity scales that are lower include scrap iron and steel, lumber, common lime and cement. Some examples of commodity mileage scales are given in Appendix F.

It comprises pages 58 and 59. It is these rates to which the proposal of equalization would apply.

By the equalization of general commodity rates, except where competitive or other conditions compel a departure from the standard pattern, the same level of rates would be available to shippers in all parts of the country. The method of attaining this objective in general, should be to adopt the lowest scale in effect as the new uniform scale on the assumption that this scale is one that has been satisfactory in the territory in which it has been used. As with other adjustments to be proposed in these Submissions, any net losses in revenue to the carriers should be made up by adjustment of the general rate level.

I think we can pass on, then, to the second part dealing with Specific Commodity Rates.

MR. FRAWLEY: Q. You have drawn a sufficient distinction between the question of a specific commodity rate as against a rate on a commodity mileage scale?

A. Well, as I said before, the specific commodity rate may apply between two points only, but it may also apply in a very limited fashion to any other points, but it is not on a mileage scale and does not apply generally.

Q. Well, we only want the first sentence before the next portion -

A. The establishing of a uniform level of specific non-competitive commodity rates will involve problems arising from the volume discrimination which underlies the whole theory of commodity rates.

Then, turning over to page 29 -

Q. In the first full paragraph on page 29, is there anything there to which you want particularly to draw the attention of the Commission?

A. Well, we simply point out that the same problem of volume arises in transportation as in other businesses, but it is slightly different in this respect, that the effect upon the shippers is very much different in that the making of rates, of lower rates, based on volume will tend in the long run to provide lower rates for those who can provide that volume, and in this way it would apply mainly or it would be to the advantage of larger shippers. We do not, of course, imply that there is any discrimination between shippers at the same point. A small shipper located in the same city as a large shipper can enjoy the same rates naturally.

Q. Then, commencing at the bottom of page 29, the establishment of non-competitive commodity rates on a uniform basis can be one means of setting a reasonable limit to the amount of volume discrimination in the rate structure. With regard to commodities that move on commodity mileage scales the adoption of uniform scales presents little practical difficulty. For specific commodity rates, however, it may be necessary to develop formulae for their construction where none at present exist. For many such rates formulae are already in use, although in general they apply only on a regional basis, as is now the case with class rates.

Then we go on to give the example of the case of newsprint rates from certain mills in Western Canada where the commodity rate has been established as a percentage of the 5th Class distributing rate.

Then, the first paragraph on page 30 - uniformity in non-competitive commodity rates, as already pointed out, does not involve the extension of commodity rates to all possible movements of traffic. The extent to which the equalization will apply will depend on the nature of the

commodity and of the movement, but some relatively clear-cut distinctions can be mentioned.

I might say that in the next two sections, titled (a) and (b), we discuss the degree of variety and freedom that will remain with the commodity rate structure.

(a) On primary products, whether of agriculture, forests, or fisheries, mines, etc., commodity rates should be uniform from all producing areas. For products of agriculture where production is uniformly dispersed over wide areas, commodity mileage rates offer the best solution. Certain products of agriculture, e.g. sugar beets, are produced in limited and clearly-defined areas and rates covering points outside such areas are naturally not required. For products of forests, mines and fisheries, it may be sufficient to maintain normal commodity rates only from actual mills, mines and shipping points, subject to the right of new shipping points to receive the same basis of rates. Rates covering processing-in-transit are similarly required only to and from processing points.

(b) On semi-manufactured and fully manufactured commodities, commodity rates may be limited to and from actual points of manufacture, subject again to the right of bona fide manufacturers or processors of the same commodities to obtain the same basis of rates.

Q. Can you give me an illustration of what would be required by the equalization of non-competitive commodity rates?

A. Well, if a producer of a certain commodity in some city in Eastern Canada, say, in Ottawa, had a certain level of commodity rates, whether specific or general, our contention is that a similar producer of a similar commodity elsewhere in the country should have the

same basis of rates, subject again to the fact that he is a bona fide manufacturer of that commodity and not just a middleman, or something like that; in other words, the extension of that equalization would only be to persons who, if we might use the term, are eligible for those rates.

THE CHAIRMAN: Q. How are you to judge their eligibility?

A. Well, if they are in essentially the same business, for example, rates on iron and steel products would naturally not be required from any point other than from iron foundries, or similar plants as commodity rates, and, similarly, in other manufactured goods, if there was some other commodity such as linseed oil or something like that -

Q. Do you mean that commodity rates should be compulsory uniform rates?

A. Only from points where there is production.

Q. Where there are points of production?

A. Yes.

Q. Wherever situated in the country?

A. Well, once again omitting the competitive rates which might be lower than the non-competitive level. We are only suggesting equalization at the non-competitive level. Within certain regions there is a certain degree of uniformity.

Q. Supposing we say we are going to discontinue the granting of commodity rates altogether; what would you say as to that?

A. Well, in pronouncing on that -

Q. Well, they have the standard which is authorized by the Board, and if they simply say, "we are going to stop the standard" - would that be an answer to your case?

A. I do not know whether I understand your question, sir.

Q. My question is this: what is a commodity rate? It is something that is set by the railway, is it not?

A. It is less than a class rate.

Q. And there are a lot of those commodity rates now in the country?

A. Yes, on all commodities.

Q. Supposing the railways to-morrow were to say, "we are not going to grant any more commodity rates, we are going to cancel them all, and go back to the standard;" what would you say about that?

A. Well, I would admit that it would be equalization of a sort, but we certainly would not agree on that, nor would it be a possible step that the railways would take.

Q. If they did take it, it would bring about a sort of equalization?

A. Yes, of a sort.

Q. What would you say? Would you say if they do grant a commodity rate in one part of the country, that then they should be bound to grant the same commodity rate to all other parts of the country where there is a similar place of production outwards?

A. That is correct.

MR. FRAWLEY: Q. In other words, you say the same about those rates as you were telling us this morning about the class rates?

A. Yes, but their application is very much more restricted in application than the commodity rates which we say should be equalized.

THE CHAIRMAN: Q. You say "restricted in their application". What do you mean?

A. Well, they do not apply from all stations or to and from any station. They may only apply from one

city in the country to another. For example, a commodity rate on aeroplane parts, there might be only four or five such rates in the whole country.

THE CHAIRMAN: Are there any points that are suffering now because they ought to have a commodity rate and are not getting it? Is that the case, Mr. Frawley?

MR. FRAWLEY: Well, that is almost too much for me to answer.

THE CHAIRMAN: I just want to know whether it is a matter of academic treatment of the situation or whether there is a real hardship somewhere or other.

MR. FRAWLEY: No, it is far from academic.

Q. Mr. Darling, if canned vegetables are moving out of Lethbridge to Edmonton, they move on a commodity rate, do they?

A. Well, assuming that.

Q. And canned goods moving out of Hamilton the distance that Lethbridge is from Edmonton would move on a comparative basis?

A. Yes.

THE CHAIRMAN: Could you go further and make the case clearer to my way of looking at it? We have got two commodities, the same commodity from two different sources of origin, but which are not going into the same market -

MR. FRAWLEY: Yes, canned goods moving from Lethbridge to Edmonton and canned goods moving from Hamilton to Ottawa, if that is the same distance?

A. Yes.

Q. Now, will you just discuss that?

A. Yes, always in the absence of competition we think those rates should be equal, that is, built on the same basis.

THE CHAIRMAN: You say that if there is, for example, a canning plant in Nova Scotia or in the Province of Quebec, that whatever rate is given to one of those, that that rate should become applicable to them all?

MR. FRAWLEY: Yes, that is right, that is our submission. You were at the bottom of page 30.

A. The equalization principle applied to commodity rates in this fashion will preserve those distinctions in rates which do not involve regional discrimination or favorable treatment on account of volume alone. The small shipper should not be denied the equality of treatment to which he is entitled. If lower commodity rates were given to some shippers solely because of the volume of traffic which they provide the railways, certain undesirable consequences would follow. If the small shipper, whose volume is not sufficient in the railways' opinion to warrant the lower rate, is charged the higher rate, it must be because it is assumed that his traffic can afford to bear the higher rate. It is difficult to avoid the conclusion that if the small shippers' traffic will bear the higher rate, then the large shippers' traffic could bear the same rate equally well. If this were the case the railways might be in the position of giving up revenue unnecessarily. On the other hand, if it is considered that the large shippers' traffic can only move on the lower rate, the charging of a higher rate to smaller shippers would have even less justification.

THE CHAIRMAN: You are not talking, of course, of small shippers and large shippers at the same point?

A. No.

MR. FRAWLEY. No, as indicated on the second line, "the small shipper should not be denied the equality of treatment to which he is entitled".

THE CHAIRMAN: A very small shipper in an industry in New Brunswick should get the same commodity rate as a very large shipper of the same commodity in British Columbia?

MR. FRAWLEY: All the competitive conditions and that to one side, yes.

THE WITNESS: Section (3), dealing with carload and less-than-carload rates - I might say that this section is not by way of a request for any changes; it is merely to show our position on the question of volume discrimination. We express agreement in theory with carload rates and less-than-carload rates.

THE CHAIRMAN: Is there anyone quarrelling with that?

MR. FRAWLEY: No, not that I know of.

THE WITNESS: I might say, at the top of page 32, the word "difficulties" should read "differences". I can say the same thing for Section (4), rate differentials based on different carload minima, by which I mean rates that are lower but for a larger minimum carload. We point out that both the Board and the Interstate Commerce Commission at the present time have set certain restrictions on this aspect, and particularly with units larger than carloads, such as trainloads, the making of rates on this basis has been discouraged. We do not wish to take exception to this method except in cases where it might involve an implicit preference to the larger manufacturer.

I might read the final paragraph here.

On certain commodities, owing to the nature of the commodity or the minimum scale of operations, e.g. coal, ore and bulky commodities, differences in carload minima may involve no hardship to shippers, since few if any may have any difficulty in making up the highest minimum loads.

On general merchandise and manufactured articles, however, varying carload minima may involve an unreasonable advantage to larger shippers or larger cities. For this reason the practice should be confined to cases where all shippers have a reasonable chance of using the lower rates.

THE CHAIRMAN: We will adjourn now until 10.30 a.m. Monday.

AT 4.45 P.M. THE COMMISSION ADJOURNED
TO MEET AGAIN ON MONDAY, DECEMBER 5TH, 1949,
AT 10.30 A.M.

A.R.

Canada
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ON ~~TRANSPORTATION~~
TRANSPORTATION

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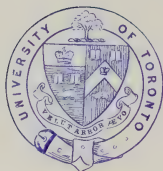
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ROYAL COMMISSION ON TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
MONDAY,
DECEMBER 5, 1949.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

- - - - -

G. R. Hunter,
Secretary.

P.L. Belcourt,
Asst. Secretary.

- - - - -

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F.R.Hume	}	Canadian Automotive Trans- portation Association
M.L.Rapoport		
R. Kerr)	Board of Transport Commissioners
J.O.C.Campbell, K.C.)	Province of Prince Edward Island

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OTTAWA, ONTARIO,
MONDAY, DECEMBER 5th, 1949

M O R N I N G S E S S I O N

MR. COVERT: Mr. Chairman, I wish at this stage to have read into the record a list of agreed charge tariffs, which has been prepared for us.

THE CHAIRMAN: What is it, again?

MR. COVERT: Sir, it is a list of agreed charge tariffs which has been prepared for the Commission, and consists of, or purports to be, a list of them in eastern and western Canada. I do not propose to give it an exhibit number now; I have only one copy, so I will have it taken as read into the transcript of the evidence. If any changes are suggested by either the Canadian National or the Canadian Pacific, they may see it in the record, and make any changes they wish.

LIST OF AGREED CHARGE TARIFFS

Eastern
Canada.

<u>AGREED CHARGE, C.T.C. (AC) No.</u>	<u>Commodity</u>	<u>From</u>	<u>To</u>
7	Advertising mat- ter, Cheese Cloth, Paper articles Sanitary sup- plies Toilet pre- parations (except per- fumes and toilet waters) Surgical Supplies Less than carloads	Toronto, Ont.	Stations in Ontario and Quebec.

8	Advertising matter, Cheese cloth Paper articles Sanitary sup- plies, Surgical sup- plies Less than carloads	Montreal, Que. Toronto, Ont.	Destinations in Ontario and Quebec.

10	Advertising mat- ter, Soap, Toilet prepara- tions (except perfumes and toilet waters.) Less than carloads	Montreal, Que	Points in Ontario and Quebec.

11	Petroleum pro- ducts, (see note) Carloads in tank cars only	Refineries and Marine Terminals in Ontario also Hull, Que., Hull West, Que.	Points in the Province of Ontario and Hull, Que., Hull West, Que.

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AGREED CHARGE

<u>C.T.C.(AC) No.</u>	<u>Commodity</u>	<u>From</u>	<u>To</u>
12	Advertising matter, Cheese Cloth, Paper articles, Sanitary supplies, Surgical supplies, Toilet preparations (except cosmetics, perfumes and toilet waters)	Montreal, Que.	Points in Ontario and Quebec.
	Less than carloads		

14	Petroleum products (see note) Carloads in tank cars only.	Refineries, Marine terminals and Storage tanks in the Province of Quebec and Ottawa, Ont. Montreal, Que.	Points in the province of Quebec. Points in Ontario.

19	Advertising matter, Disinfectants (other than medicinal) Paper articles, Sanitary Supplies, Tablets (medicinal)	Niagara Falls, Ont.	Points in Ontario and Quebec.
	Less than carloads		

24	Petroleum products (See note) Carloads in tank cars only	Marine terminals and storage tanks in Montreal (Cote St. Paul) (and Montreal East)	Points in Ontario and Quebec.

AGREED CHARGE

<u>C.T.C. (AC) No.</u>	<u>Commodity</u>	<u>From</u>	<u>To</u>
25	Salt, in bulk, Carloads	Sandwich, Ont.	Shawinigan Falls, Que.
32	Latex (Liquid crude rubber) Carloads in tank cars only	Sarnia, Ont.	Hamilton, Ont. Kitchener, Ont. Toronto, Ont.
34	Petroleum products (see Note) Carloads, in tank cars only.	Cote, St. Paul, Que. Hochelaga, Que. Montreal East, Que. Montreal (Moreau Street)	Hull, Que. Ottawa, Ont.
38	Petroleum products, (see note) Carloads in tank cars only.	Toronto, Ont.	Huntsville, Ont.
40	Salt, in bulk, Carloads	Sarnia, Ont.	Beauharnois, Que.
42	Petroleum products, (see note) Carloads in tank cars only.	Gaspe, Que.	Chandler, Que.

(Note: The description Petroleum products comprises the following commodities: Gasoline, Kerosene, Fuel Oil, Distillates, Gas Oil, Lubricating Oil, Naphtha, Naphtha solvents, Refined oil)(Illuminating or Burning), Transformer Oil, Transil oil.

LOST OF AGREED CHARGE TARIFFS

<u>AGREED CHARGE</u>		<u>Western Canada</u>	
<u>C.T.C.(AC.)No.</u>	<u>Commodity</u>	<u>From</u>	<u>To</u>
9	Butter,		New West-
	Carloads.....	Alix,Alta.	minster,B.C.
	Less than Car-		Vancouver,B.C.
	loads	Alix,Alta.	Victoria, B.C.
			Calgary,Alta.
			Edmonton,
			Alta.

13	Butter,		New West-
	carloads . . .	Viking,	minster,B.C.
		Alta.	Vancouver,B.C.
	Less than car-	Viking,	Victoria,B.C.
	loads	Alta.	Edmonton,Alta.

15	Lumber,	Points in	Points in
	forest pro-	Alberta,	Alberta,
	ducts,	Manitoba	British
		and	Columbia,
		Saskatchewan	Manitoba
	Carloads and		and
	less than		Saskatchewan.
	carloads		

17	Coal and	Bienfait,Sask.	Points in
	Briquettes,	Pinto,Sask.	Manitoba
	Carloads	Roche Per-	and
		cee,Sask	Saskatchewan
18	Eggs,	Points in	
		Manitoba and	
	Less than	Saskatchewan	
	carloads	within a 300	Winnipeg, Man.
		mile radius	
		of Winnipeg,	
		Man.	

22	Butter,	Lloydminster,	New West-
		Alta.,	minster,B.C.
		Lloydminster,	Vancouver,B.C.
		Sask.	Victoria,B.C.

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AGREED CHARGE
C.T.C. (AC) No.

	<u>Commodity</u>	<u>From</u>	<u>To</u>
36	Petroleum products: (See note)	Calgary, Alta. Valesso, Alta.	All points on the Canadian Pacific Rail- way and the Canadian Na- tional Rail- ways in Al- berta and Saskat- chewan
	Carloads, in bulk or in packages		

37	Petroleum pro- ducts (See Note)	Borradaile, Alta. Lloydminster, Alta. Lloydminster, Sask.	Points on the Canadian Pacific Rail- way and the Canadian Na- tional Rail- ways in Alberta and Saskatchewan.
	Carloads, in bulk or in packages		

41	Petroleum pro- ducts: (see note)	Calgary, Alta., Valesso, Alta.	Points on the Northern Alberta Railway.
	Carloads, in bulk or in packages.		

NOTE: All Petroleum products (excluding crude oil) as described in Canadian Freight Classification No.19 under the heading of Petroleum and Petroleum Products.

MR. COVERT: I will now call on Mr. Frawley to continue his examination.

MR. FRAWLEY: Mr. Darling?

MR. H. J. DARLING RECALLED:

EXAMINATION BY MR. FRAWLEY (Cont.)

Q. Mr. Darling, when we adjourned on Friday you had reached the fourth section of your Brief, "Competition and the Rate Structure", beginning at page 33. That is correct is it not?

A. Yes.

Q. Will you now continue with Part IV? I think it might be well if before actually beginning this part of your Brief, you would make a short statement indicating something in general language about competition in rate structure.

A. The purpose of this section is, in the first place, to show how competitive rates would fit into our proposal for rate equalization. We also gave some attention to the question of how far competition has influenced the levels of class rates. This is not a particular issue at the present time, but it has been one in the past which has been used as an argument against the feasibility of rate equalization. Furthermore, we go on to suggest reasons why we think the supervision of competitive rates is an important matter. Finally, we outline the proposals which we make with regard to competitive rates.

Q. I understand that a considerable portion of this section of the Brief is not to be read, but would you please read the first paragraph Mr. Darling?

A. "Competition as a factor in the level of class rates in Canada.

It has frequently been claimed that the lower class rate levels in eastern Canada, both for standard and town tariff rates, are the result of competitive conditions in that area. This claim has been used on different occasions as an argument against the practicability of class rate equalization. In this section it is proposed to outline the origin of eastern class rates and to note the extent to which they reflect competitive conditions, past or present."

I do not propose to read the next five or six pages, wherein we deal with that, but will turn from there directly to the middle of page 38.

Q. You say that these pages which you are passing over without reading do what the last sentence you have just read say they do: "To outline the origin of eastern class rates and to note the extent to which they reflect competitive conditions past or present."

A. Yes.

Q. Very well.

A. Starting at the last paragraph on page 38, it reads as follows:

"The importance of this problem should not be underestimated. At the present time competitive conditions vary widely throughout the country. Geographic reasons account for some of this variance but other factors have intruded. The government of Canada has made large investments in canals and harbor improvements in eastern Canada. These have created competitive conditions which have been highly advantageo

to that area in so far as transportation rates are concerned. It is true that western Canada derives benefit from the canal system in carriage of grain, but the extent of this benefit should not be exaggerated. In the first place a considerable part of the Alberta crop under normal conditions will move via Vancouver."

THE CHAIRMAN: Q. Will you tell us what you mean by "Normal conditions"?

A. In war time, sir, there were no grains moved by Vancouver, but were brought to the eastern seaboard I understand.

Q. How much goes that way now?

MR. FRAWLEY: Sir, you may recall that ^{at} Edmonton that point was raised. I said I would endeavor to find out, with as much accuracy as I could, that information. I took it up with the Board of Grain Commissioners, who are the people who would know, and I filed with the assistant secretary the results of the research which the Board of Grain Commissioners did for me at that time. Now, it was rather a conflicting document. I think that all things being equal it goes that way; but, as it is not a free market, it goes on the direction of the Wheat Board. I think that matter would have to be separately analyzed with respect to what the Board of Grain Commissioners had to say about it. If the dividing line - - geographically speaking - - was the result of freight rate structure, then the line would run, as I recall, from the evidence in the 30 per cent case somewhere a little east of the Alberta - Saskatchewan border, and everything else goes to the coast.

THE CHAIRMAN: Provided also that they will take it

at the coast.

MR. FRAWLEY: Those are other conditions; the Canadian Wheat Board makes its directions in accordance with those conditions at the west coast.

MR. EVANS: I fancy the elevator space would have something to do with it, having regard to the bunching of ships and so on.

MR. FRAWLEY: Q. Just while we are on that point - I don't know whether you would know this Mr. Darling - if a person who was clearly in the west coast area, in central Alberta somewhere, was directed to ship his grain to Fort William, would he have to deduct from his selling price the freight rate to Fort William, or to the west coast?

A. I cannot say with any certainty, but I believe it would be the freight rate to Vancouver that would be deducted under the present system.

MR. FRAWLEY: I do not suppose you know about that, Mr. Evans, do you?

MR. EVANS: No.

MR. FRAWLEY: Q. Very well then, proceed.

A. In the second place, it should be recalled that the building of canals was a measure taken, not primarily to create a traffic outlet where none previously existed, but rather to create a competitive outlet through all-Canadian territory and via Canadian ports. Alternative routes via the Erie Canal and Hudson River to New York or via rail from Buffalo to New York or other United States ports on the Atlantic have been available. The Canadian routes have been competitive with those via American ports. The successive investments in canals were motivated in large part

by the desire to retain Canadian traffic for Canadian routes and capture United States traffic from competing United States routes to the Atlantic Seaboard.

Looked upon in this light it becomes a debatable point whether the benefits of this policy have been equally divided between East and West. Against the benefits accruing to the West must be set the relative disadvantages produced by the attraction on industry and commerce exerted by a low competitive rate level in the Great Lakes area. It is possible that competitive conditions have reduced the amount of the return on this investment in rail transportation facilities in this area. But it is also possible that favorable competitive rates have encouraged the concentration of industry in this area, and the greater density of traffic thus created may have offset the effect of reductions in rates on the carriers' returns. For this reason, the level of competitive rates within Central Canada is a matter of more than local concern, particularly since the results of Federal Government policy have intensified the competition. It is important that any unwarranted difference in competitive rates between regions should be removed.

Part " " deals with "The control of competitive rates".

Competitive rates and tariffs are dealt with in three different sections of the Railway Act. Section 314 (5) contains the long-and-short haul rule. Exceptions to this rule are permitted if the Board is satisfied that, owing to competition, it is expedient to allow such toll". Subsection 6, immediately following, provides that "the Board may declare that any places are competitive

points within the meaning of this Act".

Section 328 provides the railway tariffs shall be divided into three classes: standard, special and competitive.

Section 329 (4) states what the competitive tariffs are to specify.

That section is quoted at the top of page 40.

Section 332 provides for the filing of competitive tariffs on short notice 'to meet the exigencies of competition ."

That is the quotation which follows.

Referring back to Section 329 (4),

It will be noted that Section 329 (4) of the Act appears to consider competitive rates almost wholly in connection with the long-and-short-haul rule.

MR. FRAWLEY: I think, my lord, to be able to appreciate that point it might be well to read Section 329 (4). It is not very long. It provides:

"The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any specified point or points which the Board may deem or have declared to be competitive points not subject to the long-and-short-haul clause under the provisions of this Act."

The witness is calling attention to the language between 329 (4) and 314 (5), the long-and-short-haul clause. Proceed.

THE WITNESS: I will commence the paragraph again:

"It will be noted that Section 329 (4) of the Act appears to consider competitive rates almost wholly in connection with the long-and-short-haul rule. Competitive tariffs, according to the language of this Subsection, would appear to be

authorized only between points which the Board has declared competitive points not subject to the long-and-short-haul . . clause."

MR. FRAWLEY: Q. I think to be accurate you would have to say that has to be declared or deemed.

A. That is true: that is the language of the Subsection.

"In this respect the legislation has been rendered out-of-date to some extent by motor competition, since apparently the statute has envisaged all competition as occurring at specific points in the manner of rail or water competition as over fixed routes. The pervasive and blanketing effect of motor competition over an area gives less occasion than other forms of competition for making exceptions to the long-and-short haul rule by the railroads."

(Page 11317A follows)

At this point we suggest a certain change in this section, in Section 329 (4), the one which is given at the top of page 40, omitting the word at the end of the section starting with "not subject to the long-and-short-haul clause under the provisions of this Act." That is the last two lines of the Section, and striking out the remainder of that Section and substituting for it "with reference to the commodity or commodities specified in such tariffs."

MR. FRAWLEY: Q. We strike out the words, "not subject to the long-and-short-haul clause under the provisions of this Act." , and we substitute the following words, "With reference to the commodity or commodities specified in such tariffs"?

A. Yes.

Q. All right.

MR. EVANS: Is that the only amendment?

MR. FRAWLEY: Yes, to that sub-section.

THE WITNESS: The nature of competition in transportation makes it obvious that the control of competitive rates cannot be achieved by arbitrary methods. Administrative rules and procedures must remain subject to adaptation or modification, at the discretion of the regulatory authority. Statutory provisions regarding competitive rates should lay down the basic principles without binding the regulatory authority too closely to a rigid procedure. The achievement of the broader objectives of the regulation of competitive rates is of greater moment than the adherence to a detailed and inflexible system of rules.

Up to the present time the regulation of competitive freight rates in Canada has been largely concerned with the statutory prohibition against "unjust discrimination". In *Nanaimo Board of Trade v. Canadian Pacific Ry.* 8 J.O.R. & R.

105 at 108 the Board said:

"The railway company's untrammelled right to meet or disregard competition is subject to this qualification--that after having elected to meet competition at any point on its system in a district where similar operating and traffic conditions obtain, the competitive rate should be extended to other points in the common district."

In general, only where "unjust discrimination" results does the Board feel called upon to intervene in matters concerning competitive rates. In *Canadian Freight Association v. Colonial Steamships* (1939) 29 J.O.R. & R.423, the Board disallowed a new rate on the ground that it was lower than competitively necessary, but in this case both parties were under the jurisdiction of the Board.

Apart from "unjust discrimination" there are other problems involved in competitive rates which call for a close and continuous supervision on the part of the regulatory authority. As to these problems the present statute offers little guidance to the Board.

The first class of such problems comprises those arising from changes in competitive conditions. Rate competition may decrease or disappear altogether. This may be either due to the decline or disappearance of the competing agency or to the desire of all carriers to avoid ruinous rate-cutting. In either event competitive rates should not remain at unnecessarily low levels. The differences between competitive and non-competitive rates should closely reflect the effective competition.

The second class includes problems connected with the status of a competitive rate. In some cases the Board has established rates reflecting competitive conditions existing at the date of its judgment, and in other cases competitive

rates have been made by the carriers themselves; in both cases the rates in the course of time may have come to be regarded as normal rates for the traffic concerned. Competitive rates having this status should be recognized as normal rates and extended to other regions in accordance with the equalization principle advocated in this Submission.

A third class of problem involving competitive rates is the one which concerns the relationship of competitive rates to the rest of the rate structure. For example, the compensatory nature of a specific competitive rate should concern the Board wherever there may be reason to believe that the rate is unduly low, either from its effect on the carrier's revenue position or on the position of the competing agency; regional differences in competitive conditions, because of the advantages accruing to trade and industry served by competing transportation agencies, should not be accentuated by a level of competitive rates in one area which is not closely related to current competitive conditions; additional financial need of the carriers should be met in the first place by increases in competitive rates to the maximum extent possible so as to minimize the possibility of non-competitive traffic subsidizing competitive traffic.

We are not concerned with the specific procedure which the Board should adopt in dealing with competitive rates. If the Board's responsibilities in this matter are widened to deal with problems of the type just outlined, practical considerations may govern the details of procedure required of the carriers in the making of competitive rates. When prompt action in the publication of new competitive rates is necessary, it might be inexpedient in all cases to require the rates to be published a certain period in advance of the date they are to become effective. This does not mean that the rate should not be carefully examined by the Board and be

subject to the same general requirements governing all competitive rates. Such a concession should be to provide the railroads sufficient freedom to meet competition effectively under urgent conditions.

As important as the initial study by the Board of a new competitive rate is the continuous supervision of all competitive rates. That should be a definite responsibility of the Board imposed upon it by statute. The Board must be in the closest touch with all developments affecting competitive rates, such as: the extent of actual competition, the relationship between competitive and non-competitive rate levels, the compensatory nature of competitive rates, the extent to which competitive rates reflect current competitive conditions, the volume of traffic carried on competitive rates in different regions and its proportion to total traffic and all other matters relating to competitive conditions. The information required by Rule 17 (1) of the Board's Tariff Circular No. 1 regarding a new competitive rates is as follows:

"The filing advice covering the filing of such schedule shall be accompanied by a clear statement of the reasons for such publication, the name of the party for whom the rate was made, the rate and the name of the carrier with whom competing, the rate which would otherwise apply in the absence of such publication, and such other information as will satisfy the Board as to the bona fides of the action taken."

This information alone would be insufficient for the Board to determine at a later date the adequacy of a competitive rate. For this purpose only a continuous review of the competitive rate structure would suffice.

A change in the regulation of competitive rates toward a closer supervision of competitive rate levels is not urged

for the purpose of taking from the railroads the initiative in competitive rates and transferring such initiative to the Board. But it does prescribe, the further condition which a competitive rate should fulfil, both at the date of its publication and during the period which it is in effect.

Instead of dealing with that in a separate brief, we have a suggested new Section on Competitive Tolls, which I will read in at this point.

MR. FRAWLEY:

Q. As the witness has indicated, before we leave the matter of competitive rates, we will make our suggestion as to the new Section which we think might be fitted into the Competitive Tolls section of the Railway Act. It will be a new Section 313(a), we suggest. I will read it through completely, so that it can be found in one place in the record.

"New Section 313A.

(1) A competitive toll shall at all times

- (i) cover the additional expense incurred by the movement of the traffic to which it applies,
- (ii) be such as to enable the carrier to show a reasonable expectation of improved net earnings as a result of the making of such toll,
- (iii) be no lower than necessary to meet effective competition,

and it shall be the duty of the Board to maintain such continuous examination of the competitive tariffs as will assure that at all times the requirements of the competitive tolls as in this Section defined are being satisfied.

- (2) If, either as a result of the Board's examination of the competitive tolls provided for by Sub-section (1) or as a result of the Board's investigation following upon a complaint, it has been established that

any competitive toll does not satisfy the requirements of Sub-section (1), then and in such case the Board shall order and direct the making of such changes in the competitive tolls as will satisfy the requirements of Sub-section (1).

- (3) Where a competitive toll is established for the purpose of meeting market competition such toll shall not prejudice the geographical advantage of any origins or destinations other than those to which such toll applies."

Now, we will have over the noon adjournment several copies of the proposed Section 313(a), and we will be glad to distribute them to the Commission. I have already given the railway counsel, as well as I could, that Section.

Now, will you pass from competitive toll to your Part 5, and will you just indicate briefly the purport of this part of your brief?

A. Well, this section covers two points which are of importance to long-haul traffic, and the areas which are most subject to that type of traffic. The first one is A. The Distance Factor between Eastern and Western Canada

We touched on this earlier with regard to the present composition of those rates, and we return to it here merely to discuss the rate of tapering, and the rates which should apply on long-hauls.

Q. Earlier in this brief, and to be exact, it is at pages 24 to 26 of the brief, you dealt with "Uniform Scale to be Maximum for Interterritorial Class Rates", and the large body of traffic moving on those rates is the traffic which moves from Eastern Canada to Alberta?

A. And other Western Provinces of course.

Q. You discussed there the make-up of that rate; and now, at this part of your production, page 44, you are discussing the distance factors and those rates?

A. Yes, or the rate of tapering.

Q. All right, will you proceed now.

The distance from Edmonton to Toronto is almost exactly 2,000 miles, and from no point in Alberta to Toronto or other industrial cities in Southern Ontario and Quebec is the distance less than 1,800 miles. In view of the volume of Alberta traffic that moves over these distances, the manner in which rates progress with distance is of fundamental importance to Alberta. Within Central Canada hauls of over 600 miles are a comparatively small part of the total. Beyond that distance the rate of progression is of purely academic interest. It is on traffic moving between Eastern and Western Canada that the longest hauls occur.

Appendix G, which is found at page 60, gives a comparison of the rates of tapering in the principal class rate scales using the first class rate for 1,000 miles as the base and expressing other mileages as percentages of that base. To indicate the relative level of the different scales the actual rates for 1,000 miles are also shown.

1,000 miles is used as the basis, and expressing other mileages as a percentage of that basis. The actual rates per 1,000 miles are also shown, and at page 60 we have reduced the various rates on the chief class rate scale, four of them, to an index of 1000 miles. I might say that we do not claim any priority for this method of measuring the tapering. There a great many ways of doing it, and if there were a different base chosen for the index, very much different results might be obtained, particularly if the index were shown for one of the lower mileages.

However, the purpose of this is really to show the way that the percentazge of rates for 1000 miles is calculated, and looking at the first column, it will be noted on the Prairie index that the rate of 2,000 is 45% greater than the rate for 1,000 miles. On the Superior section, the same comparison shows that the 2,000 mile rate is 68% greater. On the Ontario-Quebec scale the rate per 2,000 miles is 97% greater, and by reducing the present class rates east and west to a mileage basis, we have a figure of 99 per cent. greater for a haul of 2,000 miles. That haul, incidentally, is from Toronto to Edmonton, and it is compered with a haul from Toronto to a point Richen, Ontario, on, I believe, the Canadian Pacific.

(Page 11330 follows)

MR FRAWLEY: Q. Are you going to say something more about this table?

A. I would like just to contrast the very steep progression in the rates on the Ontario-Quebec scale after 1000 miles, compared to that on the prairie scale. It is our contention that the tapering on the prairie scale is one that is suitable for use in the new uniform class rate scale which we propose to apply within all regions. I might compare the tapering on the prairie scale with that on the scale prescribed by the Interstate Commerce Commission in the class rate investigation 1939, which was decided in 1945. Taking the rate prescribed by the Commission for 1000 miles, in that case the rate for 2000 miles is 56% greater; it is slightly more than the prairie scale, but it is considerably lower than that on the Ontario-Quebec scale.

Q. Are you finished with that now?

A. Yes.

Q. Just looking at Appendix G, perhaps it might be well if you take 1000 miles. The prairie scale index is 100; the prairie scale index for 2000 miles is 145; you say one is 45% more than the other -- 352 for 100 miles, and 511 for 2000 miles?

A. Those are the rates themselves, which I just put in by way of comparison. You might note that the rate for 1000 miles -- and all these rates, incidentally, are prior to the increase of 8%.

THE CHAIRMAN: Q. What is the 352?

A. \$3.52 per hundredweight, which is the class rate for 1000 miles on the prairie scale. That compares with a rate of \$3.26 for a thousand miles on the Ontario-Quebec scale. In other words, at that point the Ontario-Quebec scale is 26¢ below for first class rates, owing to the

steep rate of tapering -- I don't know whether I should say steep or shallow; I don't know just what the usage is in that case.

MR EVANS: You won't offend me if you say steep.

MR FRAWLEY: You better say shallow right away.

THE WITNESS: Shallow, yes, perhaps that is the safe one.

COMMISSIONER INNIS: Q. What would be an illustration of the mileage of 2000 in the Ontario-Quebec territory?

A. That would be from someplace like Toronto. That was recently extended to apply to mileages in Newfoundland, and I believe you could get 2000 miles to some place in Newfoundland, using that constructive mileage across the strait there.

COMMISSIONER INNIS: From Toronto itself.

MR FRAWLEY: Q. By the way, there is an error there which might have been corrected. The figure 642 in the 2000-mile line under Ontario-Quebec rate should be 646.

A. Yes, that is right.

THE CHAIRMAN: What are the figures again?

MR FRAWLEY: 642 should be 646, sir.

Q. And then what you say is, looking again at the prairie scale, that the actual rate for 2000 miles on the prairie scale is 511?

A. Yes.

Q. As against 352 for 2000 miles?

A. That is right.

Q. In Ontario and Quebec, where the rate is 326 per 1000 miles, it becomes 646 for 2000 miles. Now going back to page 44?

A. The middle of the second paragraph:
The tapering in the class rates between Eastern and Western

Canada, although these rates are not on a straight mileage basis, is also given -- that is in the final right-hand columns. It is significant that in spite of the comparatively low Eastern arbitrary and the deduction of 130 miles between Fort William and Winnipeg that the tapering on this scale is less than on the Prairie standard scale for similar distances.

Q. When you say "the tapering on this scale" you mean the east-west class rates?

A. That is right.

COMMISSIONER ANGUS: Q. Is it in spite of or because of it?

A. What was the question again, sir?

Q. Is it in spite of or because of that method of making the rate?

MR FRAWLEY: Q. You say "in spite of"; is it that or---

A. It might be because of, sir, because the tapering is really including the increments of only about 1200 miles, using the rate starting at Fort William, and the increments are larger for that reason than if they were increments at 2000 miles, the actual distance. That is probably true, that the tapering is steeper because of the form or the way in which the rates are constructed.

COMMISSIONER ANGUS: Q. But the tapering is less because of the form in which the rates are constructed?

A. Less, meaning that the -- I find it difficult to fix the meaning of that -- less, meaning that the increments decrease more rapidly. The increments decrease less rapidly, I would say, on the present class rates east and west because of the way in which the rates are constructed, yes.

This has the effect of exaggerating the distance

factor in the rate, e.g. at 1,000 miles the present two-factor rate is 76 cents less than the Prairie standard scale, but at 2,000 miles is 37 cents greater. As pointed out earlier in this Submission, this exaggeration of the distance factor is minimized if the Prairie standard scale be used for comparative purposes. A comparison more to the point would be a comparison of the Prairie distributing scale and the East-West class rates. The Prairie distributing rates, being 85 per cent of Prairie standard rates, would have a rate of tapering for distance the same as the Prairie standard rates. But the actual difference in rates, of course, would be much greater.

It might be objected that on traffic moving between Central Canada and Alberta the distance factor is of equal concern to both shipper and consignee and that the burden is shared on that account. This objection would overlook the economic context within which these rates operate. On the bulk of the westbound merchandise traffic there are few occasions where freight absorption is forced upon the Eastern manufacturer in order to meet competition from closer sources of supply. Normally such prices in Alberta will be factory prices plus freight from Eastern Canada. On movements of traffic eastbound, such as agricultural products, lumber, etc., Alberta products are often similar in type to those of Saskatchewan and Manitoba and must absorb the difference in rates to compete in the Eastern market. It is the Alberta shipper or consignee who is most directly concerned with this problem.

MR FRAWLEY: Q. Mr. Darling, at this point I want to read to you a short paragraph at page 55 of the Canadian Pacific brief, Part I, under the heading

"Incidence of freight charges." The passage reads:

"The Commission will have noted the frequent statements from various sections and interests that each of them pays all the freight on everything bought and everything sold. Canadian Pacific urges that there should be wise counsel given to the nation on this point; that it should be made clear that this statement is true of no one; that the incidence of freight charges is on the economy as a whole; that it is totally impossible to draw lines on the map, or to establish distinctions between groups or individuals, and to assert that this area, that group, or a certain type of individual is more burdened by transportation costs than is some other.."

Now, what have you got to say---

THE CHAIRMAN: What page is that on?

MR FRAWLEY: It is at the bottom of page 55 and going over to the top of page 56 in Part I of the Canadian Pacific submission.

Q. Now, what comment have you to make on that, in the light of what you are saying in this brief?

A. Well, in the first place, of course, we have not said that on everything bought and everything sold we pay the freight charges. Our remarks refer to what you might call the preponderance of cases, and that may perhaps be directed to some other submissions that have been made, but that is not a statement---

THE CHAIRMAN: Q. You distinguish, do you, in these shipments, cases where you pay the freight at the receiving end and cases where the shipper pays the freight at the other end; is that so? Does that exist?

A. There may be some cases of that, sir.

Q. Is that what you are saying now?

A. Well, regardless of who actually writes out the cheque for the freight bills, the problem is the incidence of the rates.

Q. Yes, but I think you said that you did not claim that the receiver in Alberta always paid the freight rates?

A. No, we do not say that he always does.

Q. Who does when you do not?

A. Presumably that is paid by the shipper at the other end, possibly, or---

MR FRAWLEY: Absorbed.

THE CHAIRMAN: Q. How do you distinguish those two classes of shipment?

A. It depends on the economic condition, sir. If there was competition closer at hand the goods coming from the east might be sold by absorbing some of those freight charges in the price.

Q. All right.

A. The second point, as to the question of the incidence being on the economy as a whole, I do not know what the exact meaning is to be given to that, but it seems rather a difficult statement to support. It would seem that if that were so it would be regardless of the difference in levels of rates in the different regions, and that you could perhaps cut rates in any area as much as by one half, to push it to the logical conclusion, without that having any effect on the incidence of freight rates in that area as opposed to other areas. And as to the problem of not being able to draw lines on the map, I should think that it would be a matter of common knowledge that if one picked an area within a radius of fifty miles of say Dawson Creek or Grande Prairie, Alberta---

MR FRAWLEY: Dawson Creek happens to be in British Columbia.

THE WITNESS: Well, Grande Prairie, Alberta, shall we say, and Toronto, Ontario. I think that it would be fairly generally admitted that the incidence of freight rates was greater in the former case. However, we are not saying that the burden of freight rates being greater is necessarily unjust on that account. We take into account the fact that distance is one of the legitimate factors in rate-making, and to that extent we recognize the fairness of it. We are not trying to equalize the burden to disregard the distance factor, but we wish that the burden be imposed fairly and that the distance factor be given adequate consideration, that it does not unduly burden those areas which are most susceptible to bearing the freight charges.

Starting at the first complete paragraph on page 45:

The proper degree of tapering is a practical matter and admittedly it might vary with particular circumstances. But so far as the class rates between Eastern and Western Canada are concerned in no case should the effective rate of tapering for distance in these rates produce higher rates than would apply if a uniform mileage scale were used throughout. The rate of tapering for distance in the Prairie standard or distributing scales is the one best adapted to meeting the requirements of long-haul traffic. It is submitted that such rate of tapering should be taken as the model for the tapering of the uniform class rate scale advocated in this Submission.

That paragraph contains our two recommendations on this subject: First, that the maximum rates should be the uniform class rate scale; and, secondly, that the tapering on the prairie scale should be the basis -- not exactly followed, perhaps, but the basis -- of the taper-

ing on the new proposed scale.

COMMISSIONER ANGUS: Q. If what you consider a proper rate of tapering were once established, would you then object to uniform percentage increases as a method of giving greater revenue if it were needed?

A. Yes, I believe, sir, that that would have an effect on it, on the fairness of it.

THE CHAIRMAN: Q. You agree what?

A. I say I believe that that would have an effect on the fairness of the tapering, the absolute level which the rates---

COMMISSIONER ANGUS: Q. You mean that the rate of tapering would have to be changed if the rates were higher?

A. If the rates were increased we would expect that there be some flattening of the rate of tapering.

THE CHAIRMAN: Q. How would that be brought about?

A. It would be brought about mainly by imposing maximum increases at beyond certain points.

COMMISSIONER ANGUS: Q. So that your proposal is related to some specific rate level -- I mean to present rate level or to that before the 30% increase or something?

A. That is right, sir. We would say that in forming the new scale the proper rate of tapering should be adapted. We do not claim that that might always be the proper rate if the rate scale went through wide changes, that is, in its general level.

Part B deals with the question of horizontal percentage increases.

MR. FRAWLEY: Before you go on that, if I may have . the indulgence of the Commission, I wish to turn back to page 40 where we propose a change in 329 (4) and I thought it might interest the Commission if I called attention to something that transpired in a recent proceeding before the Board of Transport Commissioners. It was in the matter of certain increased rates on agricultural implements from eastern to western Canada which rates were suspended by order of the Board last January, and with respect to which there was a hearing about a month or so ago.

During the argument in that case I called attention to what I thought was the rather difficult situation which Section 329 (4) created, and I called attention to the fact that before a competitive tariff could be a competitive tariff that the conditions of Sub-section (4) of Section 329 had to be complied with and I said that there must be a declaration by the Board or a deeming by the Board as to the competitive points not subject to the provisions of the long and short-haul clause to which those competitive rates would apply, and it is not of any great moment, but I took the position that in that particular case that that deeming or declaring had not been done . What I really wanted to call to the attention of this Commission was that counsel for the Transport Board, Mr. Coyne K.C., made a brief argument to the Board and that is to be found at page 6880 of those proceedings , and he said this:

"My lord and members of the Board, I was particularly interested in the argument that my friend Mr. Frawley made with regard to the interpretation of Sub-section (4) of Section 329 and Sub-section (5) of Section 314((5) of 314 is what might be called the "long and short-haul provision"). As I

understand his argument, before a competitive tariff can come into effect the Board must direct its attention to the tariff and make a decision as to it, whether the points in the tariff are competitive points or whether it is expedient to allow those rates. That is contrary to the practice of the Board. Nevertheless, I think Mr. Frawley has shown that there is a serious question whether that practice is in conflict with the provisions of the Railway Act reading those two sections together."

Now my lord, I wish to make no greater point of this matter than this, that there has been a statute which has been there, I suppose, for many, many years. I did not actually run it down to its original date of enactment but I would venture to say that that section has been there for a good many years.

THE CHAIRMAN: Since 1919 anyhow.

MR. FRAWLEY: But that Act was just a consolidation and a revision at that time. I think that we would find it ran back a good many years before that, and I am only pointing it out as an instance - there may be others - where the statute has been lying there with certain requirements and the practice of the Board - the Board has found perhaps that it is not even expedient or good business to do the deeming or declaring which this section seems to require.

Now, I say no more than that, and say we do propose an amendment which would take away the restriction which it now has, namely, that it is restricted to cases under the long and short-haul clause. In any event, I thought it was of interest to know, and I am not saying that by way of putting undue criticism on the Board - not at all. The counsel for the Board said very frankly to the Board itself

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that that had not been the practice of the Board and he did not say that I was right at all, but he did indicate that if I was right, that it had not been the practice of the Board, and he seemed to think it a point that was worth some consideration. I thought that I should say that and that it might be of interest to have that here before we get too faraway from those competitive rates.

MR. EVANS: I just wanted to ask my friend whether I heard him correctly, that the only power the Board has to deal with competitive rates, is on this long and short-haul question?

MR. FRAWLEY: Oh no.

MR. EVANS: I thought you said that.

MR. FRAWLEY: No, I do not say that, but I say that this is a general statutory provision which must be complied with in every case of a competitive tariff.

MR. EVANS: What did you say about the long and short-haul?

MR. FRAWLEY: The Section says - and I don't know whether we can spend too much time with it - that the competitive tariffs - You see, there are very, very few sections dealing with competitive tariffs. We have 328 which tells us of the three kinds of tariffs there are authorized by the Act and 328 (c) tells us that one of the kinds of tariff is competitive tariff. Then we leave that and we come to 329 (4). Then, after we leave 329 (4), we have 332.

MR. EVANS: You still have not answered my question. I want to know what position you do take on 329.

MR. FRAWLEY: Well, as I say, there seem to be only three Sections which deal with the matter of competitive tariffs - 328 (c), 329 (4) and 332 and I say that 329 (4)

must always be complied with, and that seems to impose upon the Board a very peculiar duty. It seems to restrict the whole business of making competitive rates. It says:

"4. The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any specified point or points, which the Board may deem or have declared to be competitive points not subject to the long and short-haul clause under the provisions of this act."

And so, we come back immediately to 314 and we find there that 314 says:

"6. The Board may declare that any places are competitive points within the meaning of this Act."

314 (5) is the long and short-haul clause which I need not read. Now, all I say is, when I pointed out that, that it seemed to tie down competitive tolls to the long and short-haul clause. As I say, counsel for the Board in presenting a short argument to the Board said that that certainly was not the practice of the Board, and he said that the point which I had raised was at least one of interest to him. I am seeking to do no more than that. This Commission and its advisors can determine that question. I am pointing out that at least if I went no further than this, that the statutory provisions regarding competitive tolls are not very clear and complete. That is all.

MR. EVANS: May I just, to get the record clear, offer this, that Sub-section (4) of 329 is merely describing what a competitive tariff will do. It is not empowering the Board to do anything. And the other thing is this, that it is perfectly clear from decisions extending from the beginning

of the Board, that they have power to consider the reasonableness of competitive rates and they have power to consider whether unjust discrimination is involved as well as the long and short-haul rule.

MR. FRAWLEY: I would not quarrel with my friend. I simply say they have to comply with 329 (4). They have to comply with it; it is a mandatory provision. They do not seem to be doing it. Perhaps they have found that it is far too antiquated, and has never been brought up to date. I do not know why they find it difficult, but in my submission they must do that and Mr. Coyne, counsel for the Board, says they are not doing it. I am not pointing a finger at the Board and saying they are derelict in their duty. Perhaps it is a good thing for the railways and the country that they do not do it, but I simply say to the Commission, "That is a pretty antiquated piece of machinery."

Now, we will go to the horizontal percentage increases on page 45.

THE WITNESS: I will read parts of this Section. Recent applications of the railroads for horizontal percentage increases have directed attention to the adverse effects which this method of increasing railroad revenues has on those areas where the general rate level is already higher on all long-haul traffic. The horizontal percentage increases have accentuated existing inequalities in the general rate levels, and have increased the rate differentials between long-hauls and short-hauls, and between interline hauls paying combination rates and single line hauls.

In any general increase in rates a percentage formula may have to be used as a basis if only in the interest of convenience and expediency. But there is a vast difference in the impact of a straight percentage increase in which

substantial modifications have been made to avoid penalizing long-haul traffic and basic commodities.

The form of the recent applications of the United States railroads to the Interstate Commerce Commission for increased rates offers a striking contrast to the applications of the Canadian railroads to the Board of Transport Commissioners in the 30 Percent Case and 20 Percent Case. Considering the greater size and complexity of the United States transportation system the argument in favor of horizontal percentage increases on the ground of expediency might appear to have greater force in that country than in Canada. Nevertheless it is some years since increases of this type have been - and I should insert there "without modification".

THE CHAIRMAN: Without modification?

A. By means of maximum increases imposed on certain commodities.

Q. "...it is some years since increases of this kind have been approved without the fixing of maximum rates"?

A. That is right, yes sir. Then we cite two cases of the Interstate Commerce Commission among others where different prescriptions than straight horizontal percentage increases were made.

Q. Would the difference always consist of maxima?

A. In general, sir, yes.

Q. There is no other alternative, is there?

A. Well, in some cases of small increases I believe there were flat increases. The same amount applied to all rates.

Q. Like the coal rates in our country?

A. Yes, that would be an example of it, sir. To continue at the last paragraph on the page -

MR. FRAWLEY: You are calling attention to these two cases, the 15 per cent. Case 178 I.C.C. and the Emergency Freight Charges 208 I.C.C. and then passing on to the last paragraph?

A. Yes. In the wartime and post-war increase cases, in the United States, beginning in 1942, the impact of horizontal increases on a growing number of commodity rates has been reduced by imposing ceilings which in effect transform the increases into flat amounts beyond a certain distance, which varies with each commodity, (and also with the size of the rate itself). The extent to which this refinement in technique has progressed beyond the stage of a straight percentage increase on all traffic is illustrated in Appendix H - and Appendix H will be found on pages 61 to 64 inclusive, and there we list some of the commodities which have been subjected to maximum increases in two successive increases in United States tariffs recently.

Q. Just let us look at one of them purely for example. Taking the very first one, what does that mean now?

A. Aluminum - Billets, Ingots, and so forth?

Q. Yes.

A. It means that in the tariff item there there were five different types of this commodity listed to which the rate applied, and that the maximum increase allowed in the first case was 10 cents per hundred weight and in the second one it was 16 cents.

Q. In other words, the amount tapered from the percentage increase and fixed for those commodities an increase in cents per hundred pounds?

A. We note at the bottom of page 64 - that the x-162-b increases were nearly all 20 per cent. for the above commodities and also that the x-166-c increases varied between 20 and 30 per cent. for different regional and inter-regional shipments.

Q. Do you mean there was a departure in the case of those? Do you mean that in Ex parte 162-b there was a departure from one cent to ten cents per hundred pounds in respect of that commodity?

A. That would be the case. The extent to which this refinement in technique has progressed beyond the stage of a straight percentage increase on all traffic is illustrated in Appendix H, which lists the maximum increases for numerous commodities in two successive applications. It should be noted that the two increases shown were applied to all rates at one stage or another, so that the effect of the maximum increases in holding down rates on the longer hauls has been considerable.

Many of the limitations to percentage increases in the United States were originally proposed by the railroads themselves, but the attitude of the Interstate Commerce Commission itself in earlier applications has probably been an important factor in the trend away from unmodified percentage increases. The attention of the Commission is directed to the most recent decision of the Interstate Commerce Commission of August 2, 1949, in the case of Ex Parte 168.

That case was for a much smaller increase. I remember that the maximum limits were considerably less

then they were in the large increase which preceded it. In the next paragraph, we illustrate the effect -

MR. EVANS: Do you say that the judgment says that it was because of the small percentage increase?

A. No, I do not connect them logically. There were just two factors, that first of all the increase was smaller and that the number of maxima imposed was also small.

MR. FRAWLEY: Yes?

A. In this next paragraph, which I do not propose to read, we show how the effect of a maximum increase can prevent the rise in the combination rates as opposed to single line rates. In the United States where a rate was made up of two factors, the maximum applied to the sum of the two factors. In Canada increases would be applied separately to each factor, and in that way, as shown in our illustration here, a hypothetical case, the increase in combination rates on certain commodities which have maxima is greatly reduced.

Q. It may help, Mr. Darling, if you give the Commission that illustration. What do you think about that? That is brick moving from a Canadian Pacific point to a Canadian National point.

A. I might read from the middle of the page, the sentence starting: The manner in which this would apply in Canada can be illustrated by assuming that in the 21 per cent. Case, brick rates in Canada had been subject to a maximum increase of $1\frac{1}{2}$ cents per cwt. as was prescribed in the United States in the Ex Parte X-162 A increases where the general increase authorized was 20 per cent. There was a certain comparability there,

sir, as the increase in Canada was 21 per cent. and the increase in the United States with which we are comparing was 20 per cent.

(Page - 11355 - follows)

On a movement of brick from Redcliff, Alberta, on the Canadian Pacific to Hanna, Alberta, on the Canadian National, prior to the 21 percent increase in April 1948, the effective combination rate consisted of the local rate from Redcliff to Drumheller of $10\frac{1}{2}$ cents per cwt. and the local rate from Drumheller to Hanna of 8 cents per cwt. less deductions of 1 cent per cwt. on each factor, making a total rate of $16\frac{1}{2}$ cents per cwt. The 21 percent increase raised the first factor by $2\frac{1}{2}$ cents and the second factor by $1\frac{1}{2}$ cents for the total increase of 4 cents to bring the through rate to $20\frac{1}{2}$ cents. However, had a maximum increase of $1\frac{1}{2}$ cents per cwt. been prescribed on brick, the combination rate could have been increased only to 18 cents. In the absence both of any order prescribing a through-going system of interline rates, and of any limitation on percentage increases, the disadvantages of points affected by combination rates on interline traffic have been increased. In this case the single factor rate for the total mileage would have increased from $12\frac{1}{2}$ to 14 cents, instead of to 15 cents as it did in the absence of this maximum.

THE CHAIRMAN: Q. This matter of two local rates occurs only when there is a change of railways, one rate on one railway and another rate on the other other railway.

A. Yes; in the majority of cases that is so.

Q. In the majority of cases?

A. The rates between Eastern and Western Canada are two-factor rates.

Q. It might occur then...?

A. Yes, it does occur; in rates between Eastern and Western Canada you are paying a competitive rate where the traffic moves on more than one railway.

MR. EVANS: I think you ought to clear up that point, so as to avoid confusion. The position is, when moving between more than one region there is usually the addition

of arbitraries as one factor. Take for instance the traffic moving from Western Canada to Halifax: there may be three factors, one will extend to Fort William, from which an arbitrary is added, a further movement to Montreal, and from that point another arbitrary is added. The witness is not, apparently, distinguishing between the ordinary two-factor rates and the addition to specified movements where rate territories are changed by arbitraries. There is quite a distinction there, and I just wish to have it clear on the record.

THE WITNESS: I would not agree that it was the usual thing in moving between territories, that an arbitrary is used. There are inter-territorial rates between most of the territories in the United States.

THE CHAIRMAN: Does an arbitrary always mean a decrease?

MR. EVANS: No sir. The arbitrary is a fixed amount added for the movement in the territory east of Fort William, as far as Montreal, for instance.

THE CHAIRMAN: If there is no arbitrary, what would happen? What rate would apply then? What does an arbitrary mean? Is it the name for any rate that is there, or the name of any special sort of rate?

MR. EVANS: It is arbitrary in the sense that it is a fixed amount added for a movement originating West of Fort William, and moving through Fort William to some point in Eastern Canada: As soon as it passes Sudbury --- or wherever the arbitrary applies --- an arbitrary is added to get up to the limits of the Montreal zone, and from there to get it to its final destination, say in the Maritimes, there is a further arbitration.

THE CHAIRMAN: How does the word "arbitrary" come into it? Does it mean that it is the same rate applied to different points?

MR. EVANS: Yes.

MR. FRAWLEY: Q. Do you wish to make any further comment on what Mr. Evans has said?

A. There is a technical difference between the fact that if there was not the arbitrary, the rate between Eastern Canada and Western Canada would be the local rate to Fort William, plus the local rate beyond, which is now in effect, but which is not charged on through rates between Eastern and Western Canada. That is perhaps the difference.

COMMISSIONER INNIS: Q. How important is this inter-line traffic?

A. It is of considerable importance, depending upon the commodity sir.

Q. You have no general estimate as to what it is?

A. Not on the traffic as a whole. We have, in the inter-line brief, given some details of shipments of brick, for example.

Q. You deal with that later on?

A. Yes sir.

MR. FRAWLEY: We have a brief dealing with the inter-line rate or the absence of it, and we use cement as an illustration. Cement is an outstanding example. It is made at only one place in Western Canada.

MR. SINCLAIR: No, no.

MR. FRAWLEY: There is a plant in Winnipeg, and from there, there is only one to Vancouver, located at Exshaw, in Alberta, on the Canadian Pacific Railway.

MR. EVANS: In view of the question put to me, I think I ought to add that there are through rates applying between Eastern and Western Canada that do not consist of these factors based on Fort William or Montreal.

THE CHAIRMAN: The word "arbitrary" has no application?

MR. EVANS: No. There is only the one factor rate at Fort William; the arbitrary comes into play, and there is a rate through Fort William, and through Montreal.

THE CHAIRMAN: Then, is the arbitrary a substitution for local rates?

MR. EVANS: Yes, in the factor.

MR. FRAWLEY: Q. You have a final paragraph at page 48, which you would like to read?

A. It is important that the national policy of facilitating the interchange of goods between all parts of the country be not undermined by raising rates by the convenient expedient of a horizontal percentage increase without regard to the distance factor and to the particular features of the different commodities hauled and the manner and extent of the increase which they should properly be asked to bear.

COMMISSIONER ANGUS: Q. Can you give us any idea of the index as taken in the United States taper when these maxima were used? In answer to my earlier question you told me that the factor of a horizontal increase, without the maxima, might depend on the type of tapering that existed?

A. You mean an index of tapering of the commodity rates which were affected by the maxima?

Q. Yes, that sort of thing.

A. Both before and after the imposition?

Q. Yes.

A. Of course the scale would be affected by the imposition of the maxima. I have some figures showing the tapering of various commodity scales in the United States, at the time they were prescribed, but I haven't any material at hand which would show how those maxima have affected the tapering.

Q. Would it involve a great deal of work to add to Appendix (g), at page 60, one or two columns showing a typical index of tapering of the United States rates?

A. I have the index already prepared, sir, for the uniform class rate scale which was prescribed in 1945, and which eventually will become the standard -- what is the equivalent of the true standard class rate in all the United States, outside the Mountain Pacific territory. I mentioned one factor under the rate for 2000 miles was 56% greater than the rate for 1000 miles. If you wish I might read those figures right down.

MR. FRAWLEY: We could, without a great deal of trouble, add to what we already have, or substitute an appendix (g-1), or something which would add the suggested columns which Commissioner Angus is referring to. I think that would be the better way to do it.

COMMISSIONER ANGUS: I think it would be helpful if we could have that information, and if it could show how the imposition of maxima on given freight rate increase had affected the index of tapering.

THE WITNESS: I will endeavor to get that information.

MR. FRAWLEY: We will give some consideration to that matter, and we will endeavour to file an Appendix (g-1). I think it would be better to add something to (g), rather than strike it out and substitute.

MR. EVANS: I think there may be some tendency to get at cross purposes with you, because as I understand the question and the answer are not on the same subject.

MR. FRAWLEY: Then let us clear it up.

MR. EVANS: I will let the witness correct me, if I am wrong on this point. My view would be that the maxima are usually applied on commodity rates and not on class rates.

THE WITNESS: That is right.

MR. EVANS: And that the tapering of class rates would be ineffective by any of these maxima; and when you get into the rate of taper on commodity rates, you are into a very complex and difficult problem; and I think you will find a great deal of difference in taper on the commodity rates. I would say the difference is almost as great, as a commodity scale rate, as there might be.

COMMISSIONER ANGUS: I am very much interested in that matter, but it leads to a further question, namely whether this brief is asking that the imposition of maxima should be used in Canada in relation to the class rates, or merely, as Mr. Evans has told us is done in the United States, in relation to commodity rates.

THE WITNESS: I think, sir, that would depend on the extent of the increase that is being proposed. Ordinarily, I should think that it would be applied in the greater part to the commodity rates, particularly the lower value commodity or raw material, but depending on the size of the increase it might well be applied to class rates.

THE CHAIRMAN: Q. Do you mean horizontal increases might well be applied?

A. No. Some limitation to them might be applied, sir.

Q. What limitation then?

A. By decreasing the percentages in the larger amounts either by imposition of the maxima, or a sort of graded taper in the increase.

Q. So that you would have the maxima in the class rates?

A. Depending on the particulars of the cases, I would not like to say in advance what it would be.

Q. This last paragraph on page 48 seems to make the suggestion absolute. You do not draw any distinction between class rates and commodity rates, as they apparently do in the

United States, do you?

A. Not here sir, no.

MR. FRAWLEY: That is it, not at this paragraph.

THE CHAIRMAN: Do you anywhere else? Do you limit your request for the doing away with horizontal rates to certain kinds of rates, or do you not?

THE WITNESS: I would not like to rule out the possibility that the limitation might apply to increased rates, but primarily it is used on the commodity rates.

COMMISSIONER ANGUS: Q. So that Appendix (g), as it now stands, is not intended to serve as evidence for the need of this principle of maxima.

A. No, it applies to the rate of taper, sir.

MR. FRAWLEY: We will, as I have said, sir, give some further consideration to what we can do by way of filing a supplementary exhibit to (g).

THE CHAIRMAN: I think it is important to know just what your views are, because we have heard so much about horizontal increases. If you think there are some cases where they ought to prevail, I should like to know what they are.

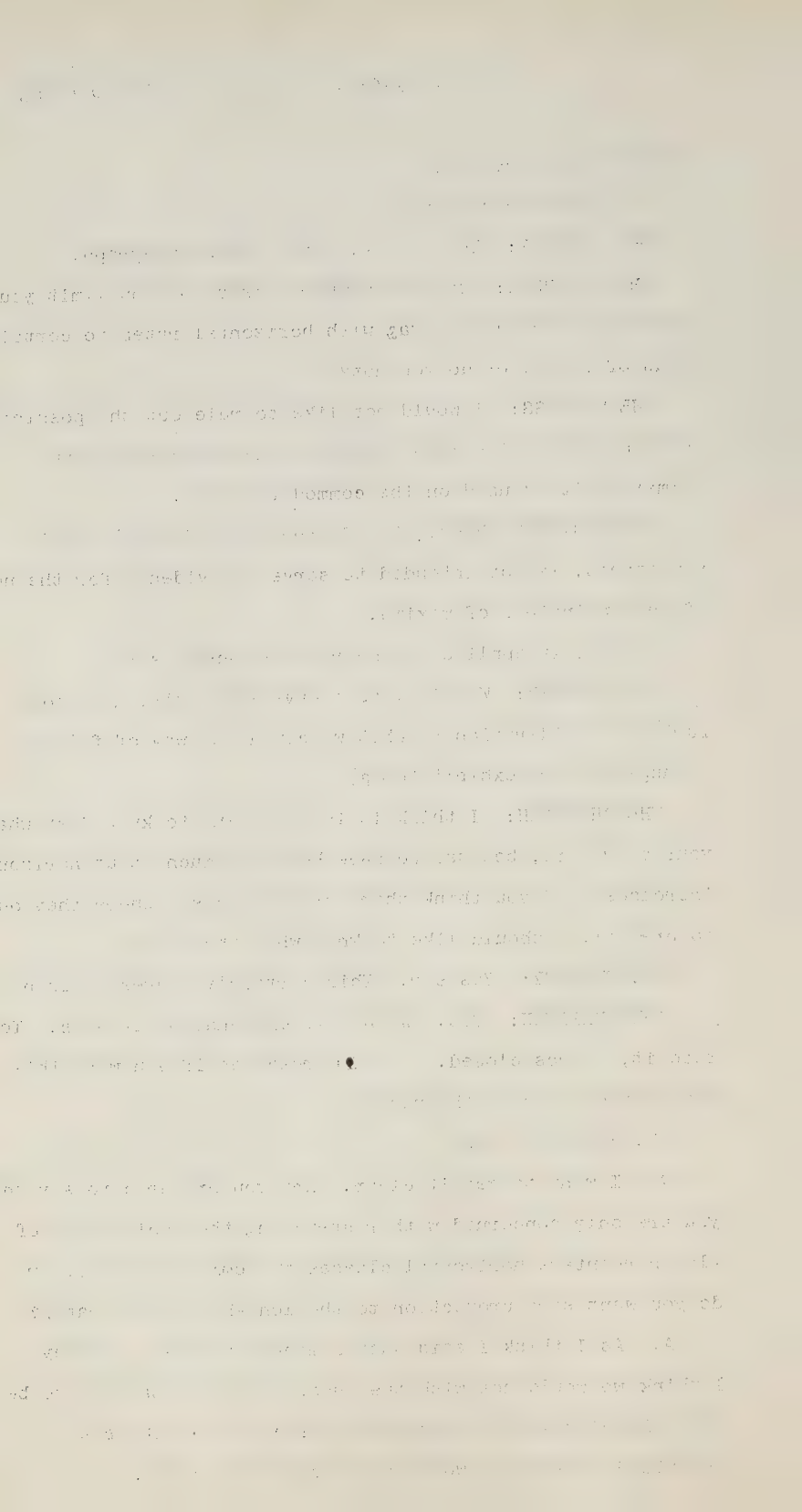
MR. FRAWLEY: Yes sir. This certainly leaves it open.

THE CHAIRMAN: Yes. With this explanation it does. To read it, it was closed. It reads as if you want this new system to apply throughout.

MR. FRAWLEY: Yes.

Q. I want to get it clear. Are you prepared to say that you are only concerned with restricting the application of flat percentage horizontal classes to commodity rates, or do you want some protection to the long-haul class rates?

A. As I think I said just a minute ago, Mr. Frawley, I think we would not wish the question of limitations to be entirely disregarded in the case of class rates; as a practical matter, it would be on commodity rates.



But if what we consider to be a proper rate of taper were prescribed for the class rate, it would reduce -- I will put it that way -- the necessity of considering the application of maxima in the case of increases.

THE CHAIRMAN: Mr. Frawley, as a result of this discussion might we not later on have a more definite statement from you?

MR. FRAWLEY: Precisely; that is what is in my mind. I think we should consider more precisely what we are asking for.

THE CHAIRMAN: It is very important, because we have heard so much about horizontal increases.

MR. FRAWLEY: Yes, I thought we were being as particular as one can but it goes to show that perhaps we can have a greater degree of particularity.

THE WITNESS: Our recommendation at the bottom of page 51 regarding horizontal increases states:

"Horizontal percentage increases should be modified by the application of maxima to prevent penalization of long hauls and low-valued traffic".

We would have to distinguish there.

MR. O'DONNELL: Our Board does it at the present time, for instance the coal rates.

THE CHAIRMAN: I beg your pardon?

MR. O'DONNELL: The Board of Transport Commissioners does that very thing, for instance the coal rates.

MR. FRAWLEY: But let us understand that the railways asked for it.

THE CHAIRMAN: Outside the coal rates, are there any others?

MR. O'DONNELL: I think so.

THE CHAIRMAN: Take the last increase of 21%, and 8%, were they not horizontal?

MR. O'DONNELL: I think so.

THE CHAIRMAN: I never heard of anything, except that on coal.

MR. FRAWLEY: Yes sir, and coke. What I am concerned about -- I am speaking from memory now -- is I think the application came in that way to the Board of Transport Commissioners on coke and coal.

THE CHAIRMAN: I would imagine so.

MR. O'DONNELL: I do not agree that is the situation entirely, my lord. I think if you will look over the old cases, for instance the 15%, I think you will find there were a number of exceptions, for instance lumber, flaxseed, coal and coke, grain and grain products, they all have the maximum increases.

MR. FRAWLEY: I do not want to be misunderstood. It was part of my argument to that Board in the regional cases, that this had been done before.

MR. O'DONNELL: But they did not see fit to do it again. They have done it many times in the past.

MR. FRAWLEY: Yes, sure.

MR. O'DONNELL: With respect to the multiple factors, or the two-factor rule, the Ex Parte 168, in the United States -- the last judgment Mr. Darling referred to -- the railways were authorized to make increases of both factors, or whatever factors there were, in any rates.

THE WITNESS: There were very few maxima imposed, though it limits that.

MR. O'DONNELL: In the event there were maxima. But in the event there weren't maxima, they could increase factors separately.

THE CHAIRMAN: Nobody is suggesting that the Board has not now the power to do what it likes in these respects, but what we want to hear is what is the full complaint against

horizontal increases, in so far as Alberta is concerned.

MR. FRAWLEY: That is right, sir.

MR. O'DONNELL: As long as we understand that, it is quite all right. I was merely pointing out that the Board has the power and has exercised it many times in this respect.

MR. FRAWLEY: Certainly they have the power; they just turned this down, except for coal.

MR. EVANS: They didn't think you made a case.

MR. COVERT: In the 15% case, to which Mr. O'Donnell referred, it is interesting to note that they were dealing with sand, granite, and crushed stone, and they said these three items could not stand a 15% increase, and so were increased to 5%. I do not think it has ever been considered that the Board has not the power; I think perhaps the hope is that they would continue to do it on the 30%.

(Page 11368 follows)

MR. EVANS: I only want to contribute one word. My friend, Mr. Frawley, is on the record as stating that the Board turned them down. The Board did nothing of the kind. It said, if there are cases where this will work hardship, they may come back to the Board and present their cases, but this is not the proceeding to take up these detailed matters, and they can come and make a special case for relief.

THE CHAIRMAN: Yes, we heard that earlier.

MR. FRAWLEY: At this point, Mr. Chairman, and members of the Commission, we are going to make a little change in the order of our presentation. As we said last week, we have a separate Brief called Regulatory Legislation. That was a perfectly well-intentioned Brief, and was intended to bring together in one place some of the ideas we have with regard to the changes in legislation. It seems that if we had put into each of our other Briefs our suggestions as to changes in legislation, our position might have been much clearer, because I was forced to the position of saying that what we had to say was to be found in another document. We have the Brief, and when we look at it, it ^{is} pretty well confined in its suggestions to the matter of equalization and regional discrimination, and also competitive rates, which we have already dealt with. It also refers to long and short-haul rates.

THE CHAIRMAN: Do I understand that with page 48 you refer to the first eleven pages of the regulatory Brief?

MR. FRAWLEY: Well, we will now put into the record as part of our Rate Principles Brief the first eleven pages of the Brief called Regulatory Legislation.

Q. Now, will you now go, Mr. Darling, to the Brief on Regulatory Legislation, and incorporate it at this point in the Rates Principles Brief.

THE CHAIRMAN: Do you intend to read it all?

MR. FRAWLEY: Not all of it. It leads up

to -

THE CHAIRMAN: All right, go on in your own way.

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REGULATORY LEGISLATION

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REGULATORY LEGISLATIONA. ESSENTIAL ELEMENTS OF THE EXISTING FORM OF REGULATION.

The Canadian Railway Act of today in its broad outlines is essentially the Railway Act of 1903 under which the present system of regulation originally was set up. Numerous amendments and revisions from time to time have not altered the basic principles of regulation implicit in the Act. These principles and assumptions date back to the earliest period of railroad regulation and show strong influences of the contemporary attitude respecting the role of the State in economic activity in general. The substance of this attitude was that self-interest could safely be allowed free rein in all purely economic activities with competition serving to curb abuses. The railroads were considered at first to be no exception to this rule and competitive forces were relied upon to preserve just and reasonable rates. The monopoly element in railroad transportation soon became too plain to be ignored and original assumptions had to be modified by the prescription of certain minimum conditions of just and reasonable rates and practices in order to prevent rates from being determined solely according to the interests of the carriers. The minimum conditions most frequently included the establishment of a scale of maximum rates, under which the carriers were free to establish rates at any level desired. In Canada control over rates by Parliament could not be exercised until a dividend of 15 percent had been paid by the carriers. But provision was made for the hearing and disposition of complaints, which concerned for the most part discrimination against individuals and places in favor of their competitors. *

* See S. J. McLean: Report on Railway Commissions. Sessional Paper 20a, Vol. 36, 1902 at pp. 33 - 40.

This stage of rate regulation in Canada is represented by the work of the Railway Committee or the Privy Council, the predecessor of the Board of Railway Commissioners. For all practical purposes the Committee functioned as an ad hoc committee for each individual complaint. The members of the Cabinet who composed the Committee could give little time to the problem of regulation apart from the devoted to specific complaints, and in the nature of things there could be little supervision undertaken in the intervals between complaints or upon the Committee's own initiative.

In this conception of rate regulation the work of the regulatory body is primarily that of the settlement of differences between conflicting parties. While the responsibilities of the Board of Railway Commissioners in the Act of 1903 were made much more comprehensive than those of the Railway Committee the general approach to the problems of regulation was fundamentally the same. The Board was to accept the rate structure in the form in which it had evolved, removing from it any instances of unjust discrimination brought to its attention. The Board, although granted wide powers, was essentially an arbitration tribunal and was guided by the statute which prescribed certain minimum conditions to be satisfied in settlements of conflicts of interest between parties. Neither then nor now did the Railway Act specify in positive fashion what the general form of the rate structure should be; rather such directives as there were, were negative in form in that they specified certain conditions which should be prohibited in the rate structure.

In challenging the adequacy of this conception of minimum regulation we are not advocating the contrary conception of rigid and detailed regulation. We can accept the principle of minimum regulation as one objective of a sound

transportation policy if by that is meant that there should not be regulation merely for the sake of regulation. On the other hand, minimum regulation is not an end in itself. The objective of rate regulation should be the attainment of whatever form of rate structure is held to be fair and reasonable.

A regulation of rates based upon the assumption that the proper field of regulation is the arbitration of differences between carriers and shippers has important weaknesses. In the first place, the real conflict of interest which prompts the public demand for regulation is not always the traditional conflict between carrier and shipper. The assumption that the burden of freight charges is borne by those who are the immediate parties in transactions with the carriers is highly unrealistic. Freight charges may be shifted many times, but in the majority of cases their final impact falls on either the primary producer or the consumer. On manufactured goods shipped from Eastern Canada to Western Canada the freight cost will be added to the selling price and borne by the consumer. The distributor who handles the goods will be interested in complaining about rates only where his competitors obtain more favorable rates into the same markets. The interest of manufacturers and middlemen are not usually affected by differences in the general level of rates or even in specific rates, provided that their competitors are required to pay the same or similar rates.

It is significant that the majority of complaints, that is, complaints dealing with rates to which we referred to the Board regarding rates have been complaints arising from discrimination between competing interests. In fact, the judgments of the Board may almost be said to have had the effect of restricting complaints to those in which the complainant is able to assert discrimination between competing interests. This limitation, particularly in cases of regional rate differences, effectively rules out complaints by or on behalf of

the consumer. Complaints of this type become ineffective if the consumer is required to show that "unjust discrimination" is caused by the difference in rates. The charge of "unjust discrimination" can be answered by pointing out that other consumers in the same town or region are treated in similar fashion. Differences in rates between regions are for the same reason very doubtful grounds for complaint, since in most cases it is naturally impossible to establish the existence of "unjust discrimination" as that term has been interpreted by the Board.

THE CHAIRMAN: You are giving us now the result of the cases heard by the Board?

A. Yes.

While the consumer may be bearing the burden of higher rates, the shippers or consignees in the most effective position to make a complaint against rate inequalities frequently have little direct interest in doing so. It may be because freight charges are passed on to the consumer directly. Freight charges are often added to distributors' costs, and margins are calculated on these costs. In such cases it may even be that the middleman receives a larger profit from the higher freight charges than he would from the lower freight charges. In still other cases shippers may be directly interested in a large number of rates on different commodities and in different regions. Advantages in some rates, e.g. favorable market competitive rates, may far outweigh any small disadvantages in other rates. Under the foregoing circumstances, all of which may be said to constitute the rule rather than the exception to the general case, the true conflict of interest is largely overlooked if attention is kept focussed on the conflict of interest between shipper and carrier alone.

A further weakness of the arbitration conception of regulation is the lack of an objective standard of what the rate structure should be, a standard which could be applied in dealing with rate complaints. In the nature of the duties imposed upon the Board by statute and evolving through precedent over

the years there has been a tendency to respect, as much as possible, the existing form of the structure. In the absence of specific statutory authority, to remake the structure according to some consistent set of principles would be regarded as bureaucratic interference in the affairs of the carriers. Although many general changes have been authorized by the Board from time to time, the Board is still unable to take a definite position on the form of the structure, on the strength of the existing statute.

This leads almost inevitably to the position that almost the only valid grievances are specific complaints involving "unjust discrimination", where the complainant can show "actual detriment". A mere comparison of two different rates on similar movements in this view has no meaning unless at the same time there is some concrete evidence of loss or disadvantage. But to demonstrate loss or disadvantage of this nature involves going beyond the rates themselves and attempting the well-nigh impossible task of assessing the value of what in many cases must be purely subjective factors: the extent of the complainant's disadvantage and its importance to him. If rate differences on similar traffic in themselves are not to be considered prima facie evidence of unjust discrimination, the determination of unjust discrimination becomes dependent upon two alternatives, neither of which can be regarded as satisfactory. Either the absolute amount of the detriment is to be conclusive, in which case the larger the shipper's traffic the easier it will be for him to establish his case, and conversely for the small shipper; or the relative amount of the detriment is to be conclusive, in which case the Board would be in the position of having to examine the business affairs and financial standing of the complainant. It is understandable that rather than become committed to either of the above courses of action the Board

should have taken the position that regional comparisons of rates by themselves were irrelevant to the problem of discrimination.

Where no objective standards for rates in different parts of the same system are acknowledged it is a difficult matter to attack regional rate grievances. It is held that, unless there is competition or some other connection between rates in different regions, a regional difference in rates is insufficient grounds for complaint. See Consumers Glass Co. v. Canadian Freight Association, 34 C.R.C. 56 at 75. The method of attack offering the greatest possibility of succeeding under these conditions requires that general grievances be challenged in specific cases by an individual who can show that he has been put to some appreciable disadvantage by the difference in rates. This is often a difficult if not an impossible condition to meet. By the time the difference in rates is translated first into an amount per unit of the commodity involved and secondly into the total amount of the complainant's disadvantage over a certain period of time, in most cases it can be made to appear that the detriment was negligible. By atomizing all general complaints in this manner the total impact of any difference in rates can be subdivided into such minute fragments that they can be ignored for all practical purposes. Atomizing grievances has the effect of making it relatively easier for the large shipper to establish the validity of his complaint than the small shipper or the consumer. Even after minute subdivision the detriment of the larger shipper may still be appreciable.

In summary, the underlying principles of rate regulation in Canada today are based on certain assumptions which are either not borne out by the facts or which lead to unsatisfactory results in practice. Among these assumptions are:

- (1) The Board is not concerned with the general

form of the rate structure, which should be left as much as possible to develop without interference.

- (2) Conflicts of interest which regulation is designed to mediate are primarily those between the carriers and their customers. Complaints of the consumer have a doubtful status.
- (3) Rate differences alone are not valid grounds for complaint. In most cases the aggrieved party must show in addition some pecuniary disadvantage.

MR. FRAWLEY: Now then, that completes our general submission with regard to the regulations and now we come to the two or three pages in which we discuss the particular changes that we think should be required, and on which we will have something to offer by way of specific legislation.

B. THE STATUTORY CHANGES REQUIRED.

In this and accompanying Submissions the Province of Alberta has presented the grievances and disabilities in freight rates from which the people of Alberta have suffered over a long period of time. For many of these grievances relief can be obtained without requiring any change in the present legislation. Recommendations covering the relief of grievances in this class have been made in the relevant Submissions. The recommendations in this Submission will be confined to the changes in the statute required to remove certain grievances and to alter the general approach to the regulation of freight rates. It is proposed to deal with the recommendations for statutory changes under the headings of the chief problems which the changes would be designed to solve.

1. Equalization.

Equalization has already been applied on a broad scale within regions in Canada without requiring any changes in the existing legislation. Conceivably it could be applied over the entire system by the implementation of appropriate decisions of the Board, without there being any revision of the regulating statute. Nevertheless the absence in the Act of any clear directive to the Board makes it inadvisable that system equalization be put into effect without an accompanying revision of the statute in order to remove the general assumptions underlying the present regulation. By way of contrast to the assumptions which appear at the conclusion of the preceding section of this Brief the assumptions that should accompany the establishment of equalization in principle are the following:

- (i) The general form of the rate structure should be prescribed by statute. The Board's responsibility then would be to maintain that form.
- (ii) Settlement of conflicts of competing interests are only one part of the general interest which regulation must serve.
- (iii) The regulation of rates should be governed in the main by standards of comparison which do not go beyond the rates themselves.

In considering the statutory changes necessary to establish the principle of equalization we wish particularly to call to the Commission's attention some pertinent sections of the Maritime Freight Rates Act. To avoid any misunderstanding of the purpose of our reference to this legislation it should be noted that we are not concerned here in one way or another with either the principles involved in the subsidy provisions in that statute or with the amount of such subsidy.

Section 3 (2) of the Maritime Freight Rates Act reads as follows:

"2. The Board of Railway Commissioners, hereinafter called the Board, is authorized and directed to

- (a) approve such cancellations, and, subject to the provisions of the Railway Act, respecting tariffs of tolls for the carriage of freight, where not inconsistent with this Act, to approve all tariffs of tolls so substituted;
- (b) maintain or cause to be maintained such substituted tariffs, subject to all provisions of the Railway Act respecting tariffs of tolls not inconsistent with this Act, on the general rate level of approximately twenty per cent below the tolls or rates existing on the first day of July, one thousand nine hundred and twenty-seven, while the cost of railway operation in Canada remains approximately the same as at the said date, but the Board may allow the increase or reduction of such tolls or tariffs from time to time to meet increases or reductions, as the case may be, in such cost of operations;
- (c) adjust or vary such substituted tolls or rates from time to time as new industrial or traffic conditions arise, but always in conformity with the intent of this Act as ex-

pressed in sections seven and eight and other relative sections hereof." (emphasis added.)

The significant point of this section lies in the nature of the directive given to the Board which is not paralleled anywhere in the Railway Act. The Board has been directed to maintain a certain relationship between the rates in two regions - the actual relationship prescribed is irrelevant here - and to vary the rates in the one region "always in conformity with the intent of this Act." The effect of this provision is to alter fundamentally the Board's responsibilities in rate regulation. It is no longer necessary for a Maritime shipper in raising a complaint regarding a difference in class and normal commodity rates between Maritime and Central Territories to show personal discrimination or actual detriment. A comparison of the rates themselves is sufficient to decide the issue. Nor is the Board justified in allowing rates to take effect and to remain in effect until specific complaints are made. The express language of Section 2 requires the Board "to maintain or cause to be maintained" the prescribed relationship in rates.

Similarly the problem of determining what constitutes a normal commodity rate has been placed upon the Board by the Maritime Freight Rates Act. Section 9 (3) provides that the Board must certify the rates that are to be taken as normal rates, to which the statutory reduction of 20 per cent. is to be applied in Maritime Territory.

It is submitted that the Railway Act should be amended so as to establish the Board's responsibility with regard to the form of the rate structure on a basis similar to that which it now has by virtue of the Maritime Freight Rates Act. This could be accomplished by paralleling the language of Section 13 (2) of the Maritime Freight Rates

Act. Such an amendment would authorize and direct the Board to maintain a relationship of equality in the general level of rates within

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and between all regions of the country. Changes and adjustments in rates would be possible in conformity with the intent of the statute. In our submission equalization would be the relationship obtaining in normal circumstances, and in any event would be the first step in the reorganization of the rate structure. While the statute would require a relationship of equality between regions, provision might also be made for changes in regional relationships in certain circumstances. The basic form of the rate structure would not be affected by such changes, and the Board's responsibility for maintaining any particular regional relationship would be identical with that which it would have under equalization. This would mean the regional differences in normal rates would either be removed or would bear a fixed relationship to each other in contrast to the number and variety of regional differences in rates now authorized on the grounds of general differences in regional conditions.

By such a prescription of the form of the rate structure in the statute itself, the Board, for the first time in history, would be in possession of a clear statement of policy from Parliament as to the aims and objectives of regulation in all parts of the country that could be applied unambiguously to the rate structure. It would authorize the Board to go further than the present minimum concept of regulation whereby rates are published and remain in effect until a complaint is raised. The shortcomings of regulation largely confined to dealing with specific complaints would be avoided, since it would be the Board's responsibility to authorize only those rates that are in conformity with the intent of the statute. The protection of the general interest would become the responsibility of the regulatory authority rather than being left to the outcome of the conflict of interest between shipper and carrier.

MR. FRAWLEY: At this point we would like to offer our suggestion to you for a new Section which we think might be called Section 331A, and then it will be in the record of course. We think it would be a new section 331A. It is still in that section dealing with the freight tariffs.

THE CHAIRMAN: How does it read?

MR. FRAWLEY: I want to put it into the record completely, so that it will be, as the other amendment earlier this morning, all on one page of the transcript.

"NEW SECTION 331A

(1) The Board is authorized and directed to maintain or cause to be maintained a relationship of equality in the standard and the special tolls of like types between all rate territories in Canada.

(2) The Board may establish such distinctions in types of the special tolls as it may deem reasonable; provided that any such distinctions be not based on regional differences as such and provided further that such distinctions shall always be in conformity with the intent of sub-section one of this section.

(3) The Board's powers under this Act to remove unjust discrimination and undue preference shall not be affected by the requirements imposed upon the Board by this Section, and the Board shall order the removal of any unjust discrimination or undue preference that may arise in connection with tolls established under the provisions of this Section; provided always that the absence of unjust discrimination shall not

excuse the failure to establish equality between standard and special tolls of like types as required by this Section."

THE CHAIRMAN: What then would be the effect of that on Section 314?

A. I might say, in the first place, that we had considered the amendment of Section 314, and I believe on Friday I said we were asking for the removal of the phrase "passing over the same line or route", and substituting the phrase, "moving over the same distance." In the drafting of this section, however, our views have changed to this extent, that we feel that this section will be adequate to ensure the concept of equalization which we have in mind, and we would, therefore, leave Section 314 (1) unchanged, and consider that that section is to be applied to cases of unjust discrimination.

(Page 11388 follows)

THE CHAIRMAN: But it has those other words there, "under substantially similar circumstances and conditions." Would you maintain them?

MR FRAWLEY: In 314, yes, sir. Our new section does not have those words, sir.

THE CHAIRMAN: No, but I say does your new section affect 314?

MR FRAWLEY: As the witness has said---

THE CHAIRMAN: If 314 is left as it is, how would it be read then in connection with your new section? What would be the result? Have you considered that?

MR FRAWLEY: Yes, sir, we have given some consideration to it, that it would be left to deal with unjust discrimination, which would have a more restricted meaning now.

THE CHAIRMAN: No, but take the first subsection of 314; it lays down the general principle.

THE WITNESS: I would say, sir, there---

THE CHAIRMAN: Then it calls for equality under substantially similar circumstances and conditions.

THE WITNESS: I would say, sir, that that phrase would have to be read in connection with our phrase in this new section of "like types of rates", and the Board having determined the---

THE CHAIRMAN: Well, I just mean this, Mr. Frawley: I think you had better look again at section 314 and see whether, in view of this proposed new section, you should not amend section 314 in some of its particulars.

MR FRAWLEY: Yes, in case there should be conflict between that section---

THE CHAIRMAN: You cannot leave the Act, you

see, in a condition of uncertainty; you see what I mean. This new proposed section would be a very important section, therefore you must see whether it fits in with already existing sections.

MR FRAWLEY: Yes, that is true.

THE CHAIRMAN: Whether it creates confusion when read with them, and so on.

MR FRAWLEY: That is true, sir. There is not any doubt about it that any addition of a new section would have to be very carefully considered, and the whole statute---

THE CHAIRMAN: Perhaps you can come back and tell us later on that it is all right to leave things as they are, but you may change your mind about that.

MR FRAWLEY: Yes. I am very glad to have an opportunity to look at that.

THE WITNESS: The recommendations in the following parts of the brief on regulatory legislation are either withdrawn or in our estimation have been adequately covered by the equalization amendment of section 331A. . and therefore we are not presenting those pages at this time.

MR FRAWLEY: Q. You are not attaching any particular importance now to pages 12, 13, 14, 15 and 16 of the brief on regulatory legislation?

A. No. It is our belief that our section 331A takes care of the main points we had in mind in those sections.

THE CHAIRMAN: Q. That goes down as far as the end of 14?

A. To the end of the brief, sir, actually; the rest of the brief, my lord.

MR FRAWLEY: The rest of the brief; because

when you come to competitive rates, sir---

THE CHAIRMAN: We could call that good news.

MR FRAWLEY: I am very glad, sir. I must not take any more time on the presentation of Alberta's case than---

THE CHAIRMAN: I think what you are doing now does indicate or does emphasize the importance of looking at the present sections of the Act.

MR FRAWLEY: Yes, sir.

THE CHAIRMAN: In the light of your new section.

MR FRAWLEY: That is right, sir. We will do that, sir.

MR EVANS: I would also like to ask my friend whether this section on burden of proof is to be abandoned.

THE CHAIRMAN: Well, he is not calling our attention to it, because he thinks it is covered, among other things, by this new section 331; isn't that right?

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: I may be wrong, because I just heard you read it once, and I have not seen it, but I think you say there that all discrimination is to be removed if it can be shown that there is discrimination, whether it is just or unjust, in that section you read.

MR FRAWLEY: Q. You understand his lordship's comment, Mr. Darling?

A. The only reference to discrimination in that proposed third subsection was to the fact that if the Board were to apply equalization to some particular type of commodity rates, and there was some party which might not technically qualify for those rates, the provisions of the discrimination section should of course apply for relief in his case. I have in mind---

THE CHAIRMAN: You say at the end of that subsection:

"provided always that the absence of unjust discrimination shall not excuse the failure to establish equality between standard and special tolls of like types as required by this Section."

A. That is right. The equality is established by statute, and the purport---

Q. Whether there is unjust discrimination or not, the very fact that there is an inequality means that the rate must be---

A. No, sir, we do not say that, sir, as between---

Q. Well, you say:

"provided always that the absence of unjust discrimination shall not excuse the failure to establish equality between standard and special tolls of like types as required by this Section.".

A. That is right; as between each type, yes, sir.

THE CHAIRMAN: I think I gave you a case the other day, and you answered me; I gave you a case, for instance, of a rate between a canning establishment in British Columbia and a point 100 miles or 300 miles away, and then a canning establishment in Nova Scotia and a point the same distance away, and you told me that the rate should be exactly the same in both cases.

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: Although they have no relation whatsoever to each other in the way of business.

MR FRAWLEY: That is right, sir -- always excluding the competitive factors.

THE CHAIRMAN: I am glad you mentioned that. Suppose in that hypothetical case that later on a truck service was established in the British Columbia region

and not in the Nova Scotia region, and the railway wished to compete with the truck service in British Columbia and consequently lowered its rate; would it then have to lower its rate in Nova Scotia also?

MR FRAWLEY: No, I understand not, Mr. Darling.

THE WITNESS: No, sir, not if competition -- the idea, sir, is that the---

THE CHAIRMAN: Q. Then in the case of such equality being shown, competition might be an excuse?

A. That is right, sir, yes.

MR FRAWLEY: Q. Now if you will go back to page 49 of the rates brief, we have just the recommendations left.

THE CHAIRMAN: The rates brief -- that is the one we have been reading?

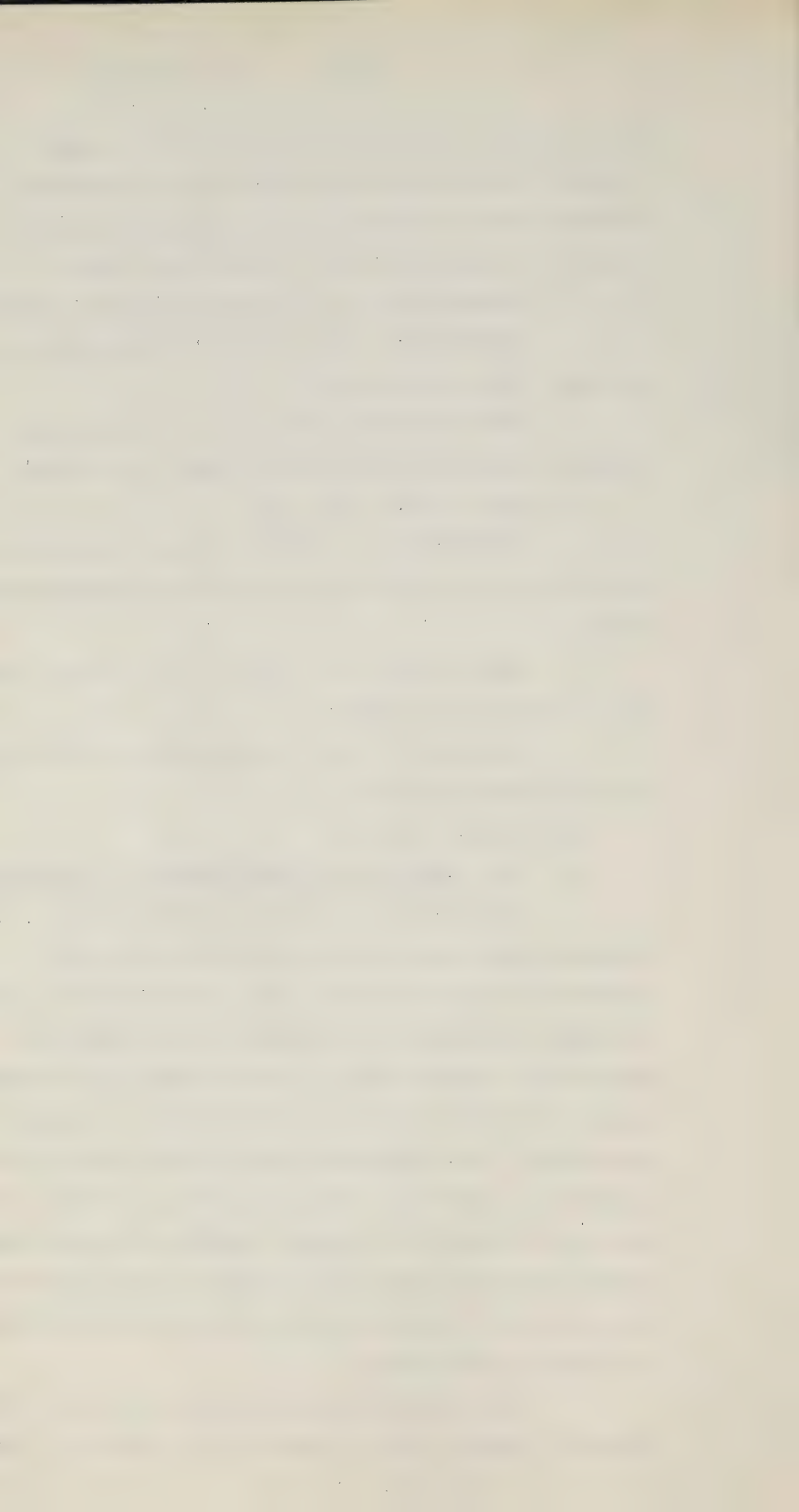
MR FRAWLEY: That is the one we have been reading all morning, yes, sir.

Q. Page 49, Part VI.

A. "VI SUMMARY OF RECOMMENDATIONS AND CONCLUSION

The Province of Alberta submits that an essential step toward the removal of freight rate grievances in the different parts of Canada is the prescribing of the general form which the rate structure should have, whether this be done by statutory or other means. If this form can be made explicit -- I might add, by statute -- the regulatory authority will have a clear indication of national policy to guide it. At the present time such direction is lacking, leaving the Board with little alternative but the acceptance of the rate structure as it is, except in cases where personal discrimination can be established.

It is not necessary to convert the Board into a national planning body to achieve this objective. The



declaration of a policy,-- again, in the statute -- such as that of rate equalization as advocated in this Submission, would have the advantage of leaving to the Board the administration of the statute, without imposing upon it problems involving broader issues of national policy.

The equalization principle has the advantage of eliminating the multitude of regional differences in rates for which there are no valid grounds based on contemporary conditions. Equalization also would give full weight to the organic nature of the transportation system and thus avoid rate disparities which would give unwarranted advantages to those parts of the system where traffic density is greatest. These advantages tend to create new advantages of the same order so that the effect becomes cumulative. Equalization will prevent the freight rate structure from becoming a force adding to the already strong economic and institutional forces operating in the direction of centralization.

Q. Can you give some examples of what you speak of there?

A. Well, I suppose by way of example of economic force in the direction of centralization, would be the advantages of unified and large-scale production.

THE CHAIRMAN: Q. Unified, you say?

A. Well, consolidated production, in one plant. And as to institutional forces, we mean by that such things as the capital investments already made and the size and the corporate organization of industry.

COMMISSIONER INNIS: Q. You do not think equalization would make for more centralization?

A. No, sir; we believe it would act as a sort of brake on that.

MR FRAWLEY: Q. Very well, go ahead.

A. Regional differences in transportation conditions which are not fully accounted for by system conditions or by the effects of national investments in transportation facilities within and for the benefit of particular regions, may still be recognized within the limits of the equalization principle and without abandoning the basic concept of regional discrimination.

In conclusion, it is submitted that a rate structure built along the lines of the principle offers

"the only means of dealing equitably with all parts of Canada"

and is the method

"best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."

Our recommendations regarding changes in the rate structure and in rate regulation are given below. And the last sentence will not be required now.

Changes in the Rate Structure.

- (1) The various territorial class rate scales should be replaced by a uniform class rate scale to apply in all territories.

We note that the Maritime Freight Rates Act of course will continue to override the Railway Act, as it does at the present time.

- (2) The uniform scale should apply as a maximum on present inter-territorial class rates.

MR FRAWLEY: Q. Once again, you have in mind principally the east-west movement?

A. That is right, yes.

- (3) The new uniform scale should be established at the approximate level of the Eastern town tariff scale.

- (4) The uniform scale would automatically apply on the Canadian factor of international class rates between United States and Western Canada.
- (5) Commodity mileage rates within the different territories should be equalized initially at the level of the lowest scale now in effect.
- (6) Formulae for non-competitive commodity rates should be the same for all territories.
- (7) Lower rates for higher minimum carloads should either be extended in more uniform fashion or their use be restricted to meet exceptional circumstances.
- (8) Current competitive conditions may sanction departures from the above equalization requirements, subject to meeting the requirements for the establishment of competitive rates.

Q. When you say "the requirements" you mean the requirements which we advocate in this brief?

A. That is right.

Q. For the establishment of competitive rates?

A. That is so.

Changes in Regulatory Policy

- (1) The principle of equalization should be recognized as the basic determinant of the form of the new rate structure.

And we would say that that would be achieved by the adoption of the suggested amendment to the Act that we have recommended.

- (2) Cost of service may function as one factor among others in determining the general level of rates over the system, the classification of commodities and the minimum level for specific competitive rates.

- (3) Regional discrimination would be prohibited.

The prohibition would be against departures from the equalization principle which cannot be justified by current competitive conditions, considerations of national policy, and considerations warranting the establishment of commodity rates, of various types.

- (4) Question of fact in border-line cases concerning the right of a shipper or consignee for non-competitive commodity rates should be determined by the Board.

- (5) Competitive rates should be examined on first application and be subject to continuous review. Obsolete competitive rates should be raised or be made the criterion of normal commodity rates.

- (6) General competitive conditions should be taken into account in any changes in competitive rates or in general rate levels.

THE CHAIRMAN: Q. What do you mean by "obsolete competitive rates"?

A. Well, we mean certain rates that were established or prescribed by the Board at some earlier period to meet competitive conditions at that time.

Q. And no longer being followed?

A. That is right. That is the case with the eastern---

Q. They are no longer followed, they are gone?

A. The competitive conditions---

Q. I mean the rates themselves.

A. The rates are the same.

Q. Oh, you mean the competition is obsolete?

A. That is it, sir.

Q. You make it read "obsolete competitive rates";

you mean rates applicable to obsolete competition?

A. That is right, yes; that is the meaning of that.

(7) Horizontal percentage increases should be modified by the application of maxima to prevent penalization of long hauls and low-valued traffic.

COMMISSIONER INNIS: Q. Footnote 2 on the preceding page, page 50: is the omission of the Crowsnest Pass rates deliberate or---

A. We say, sir---

THE CHAIRMAN: Q. Where is that?

A. On page 51, in section 3, regional discrimination:

"The prohibition would be against departures from the equalization principle which cannot be justified by current competitive conditions, considerations of national policy,"

under which we would consider such things as the Maritime Freight Rates Act and the Crowsnest Pass rates.

Q. Where do you refer to this national policy?

A. On page 51, sir, in section 3; and I might say we also mention it similarly in the first part of the brief, at page 4, subsection 5:

"The level of rates established for reasons of national policy will be determined by the nature and aims of the policy in question."

COMMISSIONER INNIS: Q. So you would really add the Crowsnest Pass rates to that?

A. We do not include that.

Q. But you add the footnote.

THE CHAIRMAN: Q. Would you include them?
After all, the national policy---

A. In this particular footnote, sir, we were speak-

ing of class rates only, which of course would not apply to the Crowsnest Pass rates in any event, but we do except them from the other recommendations.

MR FRAWLEY: We don't want to be coy about it, sir. We certainly contemplate no change in the Crowsnest Pass rates.

COMMISSIONER INNIS: I thought that might be so.

MR EVANS: It is only the language that was coy, it was not my friend.

MR FRAWLEY: Now, we will find out what you mean after Mr. Evans has finished cross-examining you.

CROSS-EXAMINED BY MR EVANS:

Q. Mr. Darling, while we are on that subject of grain rates, in connection with the equalization, I understand from what you and your counsel both said within the last few minutes that it is perfectly clear that grain rates as such would not be equalized under your proposal?

A. Those covered by the Crowsnest Pass rates.

Q. Yes. Now then, do I understand that to go as far as this, that in considering the equalization as between eastern and western Canada you would give no weight to the substantial advantage which the west derives because of the Crowsnest Pass grain rates?

A. No, I would not say that. We are not excluding them from that consideration.

Q. When you come down to the equalization of class rates and of the mileage commodity rates and the other rates, would you give effect to the advantage by putting the western rates on a position slightly above equality to make up for the advantage they derive under the Crowsnest Pass grain rates?

A. No. I think the only departure that we had in mind from equalization was where, as we stated in part (f) of section 1, if it could be shown over a period of years, and offsetting any consideration of the organic nature of the system, that one region had consistently a higher level of earnings, then there might be some departure from the equalization which we propose.

Q. I want to get down to the question really. My question was, would you give weight in equalization between west and east to the amount of advantage which the west derives from the Crowsnest Pass grain rates?

A. Well, in the sense that we would consider the total position of the west as against the total position of the east.

Q. You mean revenue-wise?

A. Both cost and revenue.

THE CHAIRMAN: Q. You would consider what, did you say?

A. I said we would consider the total position of the west as opposed to the total position of the east.

Q. What position are you talking about?

A. As far as the comparison which we have in mind between what we have loosely called the earnings ratio, sir.

Q. Of the railways? A. Of the railways, yes.

MR EVANS: Q. Now, I understand this principle of equalization, without regard to operating ratios and in various regions, your prime consideration is equalization of rates as between all rate payers?

A. We say that would be the first step, yes.

Q. Now, I understand that the exception to which you refer is that if you found a region where there were violent changes or violent differences in the cost of

operation, the equalization proposal might have to give way?

A. We do not contemplate any further subdivision of the regions than east and west, as at present.

Q. Now, if it were shown that there was equal net derived by the two railways, the two principal railways, from their operations east and west, would you give any weight in your equalization proposal to the difference, measuring the advantage, in the grain rates, under the Crowsnest Pass rates?

A. Well, in the first place, in your question, I think we would use the Canadian Pacific as the yardstick.

Q. That is what you would like to do in measuring revenue and profitability of regions?

A. That is what has been done up until the present.

Q. Now, having interpolated that, would you then go on to answer my question?

A. As I said, if the earnings ratio in eastern Canada and the earnings ratio in Western Canada over a period of years, and taking into account the relative investment in each area, over a period of years and consistently were to show a difference -- let us say that the ratio would be 90% in the east and it might be 89 or 91 in the west; then we would say that if that difference was considered to be a consistent one and it was not to be accounted for by such things as the system factor, the close linkage between the various parts of the system, after having given effect to that, then we would say that such departure from the equalization should be allowed to the extent that those ratios should be brought roughly in line.

Q. Now, is it equalization you want, or equalization of earning power between east and west?

A. We do not want either in particular. We say that equalization is a position of dead centre, as it were, which should not be disturbed except for very important considerations, under those conditions which I have just said.

Q. Now, if it should prove in a few years' time that the railways were able to earn a great deal more money in eastern Canada than in western Canada, I assume that your equalization proposal would give way to a proposal by which the general level of rates would be reduced in western Canada below equality with eastern Canada?

A. I understood you to say that eastern Canada would be earning much greater.

Q. I said, if it should prove in future that that should be the case?

A. Yes.

Q. Then would you take the position that your equalization proposal would give way to a claim for a reduction in western rates -- an increase in western rates?

A. That is what I did not understand.

Q. I am sorry -- an increase in western rates?

A. That might be the case -- as I said, taking into account these various factors which we have mentioned, and vice versa.

(Page 11403 follows)

Q. Now then, whatever may be the position with regard to earning power east and west, you want to start now with equalization?

A. Yes, that is true.

Q. Now, would you date your changes in that equalization, from the present revenue earning power or would you only date those changes when the earning power in the east or west showed that the railway, the Canadian Pacific Railway in your case - the two areas in my thinking, had changed their position of equality?

A. I do not think we would establish the equalization with reference to any particular level between the two areas. It is our opinion that those levels are at present insignificant, and are wholly accounted for or more than accounted for by what I have called the "system factor" and the fact that one area might have a ratio one point below the other would not be considered in the relationship of equality.

Q. Well, I am rather interested in that because I gather now, that you feel that the differences in earning power of the Canadian Pacific, east and west, are not sufficiently great to warrant a difference in rates?

A. Judging by the statistics in the Mountain Differential Case which I might cite here -

Q. I merely want a matter of principle.

A. You asked for the basis of our opinion, and I thought perhaps I had better point out what that was. In the operating ratios for the Canadian Pacific Railway for the twelve months ending October 1948, as shown in the Exhibit - I think it was 94, in the Mountain Differential Case, the ratio for the west was 92.1 and for the east 92.6, for all lines 92.4. In our submission that

is an inconsequential difference.

Q. What I mean to say is, you do not now challenge that that is the true position?

A. These figures?

Q. Yes.

A. No, I don't think so.

Q. Then you do not go along with Manitoba in its view that all the profit substantially of the Canadian Pacific is earned in the west?

A. Well, the profit in the east might be derived from the west.

Q. I merely asked you the question whether you agreed with Manitoba in that connection.

A. I am not familiar enough with the Manitoba proposals to say.

Q. Now, on your equalization proposal, would you agree that in order to get equalization between east and west, the so-called assumed mileage between Fort William and Winnipeg and between Vancouver and Glacier would either have to be eliminated or that some weight would have to be given in the degree of equality?

A. We would say that by the use of the distributing rates as the uniform class scale, that practically the same result would now be achieved as is achieved by the constructive mileage, and that, therefore, in effect the constructive mileage could be eliminated.

Q. Now, then, what you say is, that if you adopt the distributing rates as the class rate scale, it would no longer be necessary to have this assumed mileage?

A. In our submission no.

Q. I just wanted to get your position clear.

But it would be different, I gather from your qualification, if we retained the standard rates and the distributing rates?

A. We do not regard that as a very serious possibility but it might make some difference.

Q. I am asking you what you are thinking. Are you prepared to say that it would be different, that your approach would be different?

A. I think if the standard rates were retained, then perhaps the constructive mileage rates would be retained.

Q. Would the assumed mileage rates in their relation to the rates between Fort William and Winnipeg and Vancouver and Glacier be retained in all tariffs merely because we did not do away with the present standard tariffs and adopt your suggestion of distributing class rates as the class rates for Canada?

A. Well, I think it makes a considerable difference to us whether the standard mileage rates are retained or the distributing rates are substituted for them, and if the standard mileage rates are retained at their present high level, I think we should certainly want the constructive mileage to be retained to give us some compensation for the level of those standard rates.

Q. We are talking equality, Mr. Darling. Would you not want the same advantage to be given to eastern Canada, because we are talking equality? Wouldn't it be fair, on the assumption that this Commission or the Board of Transport Commissioners should feel that the standard rates should be reduced, would it not be fair that eastern Canada should also get something

the equivalent of the advantage that western Canada gets?

A. No, I don't think so. I think what we would like to see there is the change in the tapering of the rates to offset - -

Q. A change in the tapering of the class rates?

A. No, I would say that these are all hypotheses that we have not considered before as a matter of fact, and what I would say is as to between retaining the constructive mileage and asking for equalization, if the equalization involved a greater tapering in the standard rates that would offset or would compensate for the constructive mileage, then that might be a possible solution.

Q. I gather you want equality if you can have a nice kind of equality that keeps your advantages for you? It is a fair equality you want, is it, Mr. Darling?

A. I believe it is, from what we have proposed. We have not proposed that anybody else get higher distributing rates than we.

Q. I am asking you whether you propose, if you retain these constructive mileages, that the east should have the benefit of the same sort of thing?

A. Well, it does not matter very much to us as far as that goes, if you can find some place for constructive mileage there. We are not proposing that, no.

Q. But would you object to it?

A. It depends on where you want to establish it.

Q. As a matter of principle, and assuming the mechanical difficulty you are stumbling on could be dealt with, as a matter of principle would you not agree

with me that these assumed mileages should be eliminated to get equality or that if they are retained the ^{east} /should have a similar benefit?

A. I see no harm in agreeing with that proposal; it is a likely one in our estimation.

Q. Quite often there is no harm in agreeing with things, Mr. Darling. Now then, have you given consideration to the difficulties of producing equality in view of the provisions of the Maritime Freight Rates Act?

A. Such as what?

Q. Well, have you given consideration to any of the difficulties?

A. No, I don't think that -

MR. FRAWLEY: Is there a difficulty?

A. I have not seen any difficulties.

MR. EVANS: You do not see any difficulties?

A. No.

Q. Now, may I suggest difficulty number one. You have made a division of Canada into two regions for the purpose of your equality. Am I right?

A. That is right, yes.

Q. Now then, rate-wise the Maritimes are in a position under which the Act provides that rates may be increased only when costs of transportation in Canada increase. Have you never considered that you could not, without a change in the Maritime Freight Rates Act, have equality east and west?

A. Under any plan of equality, you mean by that?

Q. I mean equality as you are putting it forward.

A. How would that proposition or that section of the Act -

Q. I put it this way now. The Maritimes have contended under Section 32 (b) -

MR. FRAWLEY: Have you got that statute?

A. I have it quoted in our Brief; I am trying to find it. The phrase is "While the cost of railway operation in Canada remains approximately the same as at said date.."

MR. EVANS: Now, under that section here is the difficulty. If equalization means increasing the rates in eastern Canada to obtain equality, you would find that under that Act the increase, not having been based upon an increase in the cost of transportation, you probably could not increase the rates in the Maritime Provinces. Now, would that not provide a difficulty in your equalization proposal?

A. None that could not be removed by an amendment to the statute.

Q. Then, all I want to get from you is whether you would be in favor of an amendment to make possible the application of this equality principle to the Maritimes?

A. It might be necessary to redefine the statutory advantages as the reconstituted rate structure.

Q. Would you be in favor, as a representative of Alberta, of an amendment?

A. If that were a bar to equalization, yes.

Q. That is all I am putting to you.

MR. FRAWLEY: Without taking away from the Maritimes any of their present advantages. We have made that clear?

MR. EVANS: All you have done is to muddy it up now, Mr. Frawley. I don't know how you can take away some of their advantages and retain them.

MR. FRAWLEY: Just give them a different kind perhaps. In principle, however, we are not seeking to take away from the Maritime Provinces whatever advantages they now have under the Maritime Freight Rates Act.

MR. EVANS: Now, Mr. Darling, in view of what your counsel said, do you wish to change the answer you gave?

A. Well, I think the consequences on the Maritime Freight Rates Act would have to be considered in the particular case where eastern rates would have to be raised.

Q. Now, supposing you could not amend the Maritime Freight Rate Act, would you put the whole burden of the increase necessary to produce equality on Ontario and Quebec?

A. I do not know the burden that would be required by increasing the rates in Ontario and Quebec on that account. I think they would be quite small.

Q. Small or big, would you put it on them?

A. You mean to establish equalization leaving the Maritime Freight Rates Act unchanged?

Q. Yes. You see, assuming that the west is right, and the eastern rate level is lower than the western rate level, now you have got to bring up the eastern rate level and since you cannot touch the Maritimes on the assumption that you cannot amend the Act, would you put the total burden on Ontario and Quebec?

A. At the start possibly, but at the first change in the level of costs, the matter could be adjusted.

Q

Q. Then, you would not have equality would you - emphatically you could not get equality that way?

A. If the level of costs were to change, then the Board could order such change in the rates in eastern Canada saying that costs had lowered or increased by that amount and could therefore put in the equalization in harmony with the Act.

Q. But any equalization that reflected that would have to share the burden not only on Ontario and Quebec but by the western provinces that was shared by the Maritimes, wouldn't it?

A. Logically, I suppose it might follow.

Q. I just wanted to know what you would do in this case faced with these difficulties.

A. Was that a question?

Q. Yes.

A. I thought I had answered it. I said it would follow logically.

Q. All right, if you consider that answer satisfactory. Now, then, difficulty number two. Let us suppose that your equalization proposal resulted in a reduction in a large number of rates in western Canada. I am not asking you which ones, but let us suppose it did. Have you considered the attitude of the Maritimes under their Act in which they might claim, as they have done on some occasions, that they are entitled to have the benefit of any reduction made in rates elsewhere in Canada? Have you considered that difficulty?

A. I think we have framed our proposal in line with what we think is desirable ourselves. If there are objections raised by other provinces -

Q. I think you are putting it very fairly. What you really are saying to me is that you measure your proposal by what you want rather than to measure it in terms of some of the practical difficulties obtaining

A. We measure our proposals on the basis of what we consider as fairness to all parties - put it that way.

Q. The Maritimes included?

A. Yes.

THE CHAIRMAN: I think we will adjourn now.

At 12.55 p.m. the Commission adjourned to resume at 2.45 p.m. this day.

(Page 11411 follows)

OTTAWA, ONTARIO, DECEMBER 5th, 1949.

A F T E R N O O N S E S S I O N
H. J. DARLING - Recalled.
CROSS-EXAMINATION BY MR. EVANS CONTINUED

Q. Mr. Darling, in an attempt to narrow down the issue, I gather at the moment that if there is any difference at all --- and I assume there are differences --- between the railways equalization proposals and those which you propose for Alberta, that there are mainly two differences: one, as to the degree at which we respectfully think equalization can be achieved; and, two, as to the extent of any legislation that may be required to give effect to it?

A. Those and also the difference in principle which may be involved.

Q. It, in the result, narrows down to a matter of degree, does it not?

A. As to the practical working out of the two?

Q. Yes?

A. Yes.

Q. I mean you, for example, and I may take into account some different factors in determining to which absolute equalization can be achieved, for example, on the special commodity rates?

A. That is true, yes.

Q. I just want to narrow this thing down, if I can. As a practical example, might the extent to which the existing point-to-point commodity rates, as distinguished from the commodity mileage scale, can be equalized, must bear in mind the disturbance which may result to existing industry?

A. No more so than the other rates to be equalized.

Q. I think you and I would agree that the substantial majority of total volume of commodity moves at the commodity rate, and not at the class rate?

A. That is true.

Q. So that the disturbance may come to a larger degree in attempting to equalize the commodity rates?

A. Well not any more in the specific than in the commodity mileage rates, I wouldn't think.

Q. Do we get down to this basis, that the extent of the disturbance will depend on the amount of traffic on the particular rates that would be equalized?

A. As far as the volume of traffic affected, yes.

Q. And one would expect that the disturbance would be greater where there is a greater volume of traffic affected?

A. The change might be greater. I would not relate a change to disturbance.

Q. You mean that if the equalization did not require any substantial or material change in the rates to get equalization, you might minimize your disturbance,. Is that what you mean?

A. Minimize the changes necessary, yes.

Q. Speaking on the basis of a given difference to be equalized, the disturbance would more likely take place on the commodity rates than on the class rates?

A. What do you mean by a given difference?

Q. Assuming --- ?

A. A single rate?

Q. The given amount of change. Where there is given amount
/of changes to bring about equalization, the disturbance would be greater in the case of commodity rates than it would be in class rates

A. I don't think that necessarily follows.

Q. I had thought that you had agreed with me that the volume of traffic would --- ?

A. The volume of traffic may be greater on a particular commodity rate than on a certain class rate; there might

be a bigger change required in the class rate.

Q. That is what I mean: a given amount of change, assuming it to be (x), you would expect a greater disturbance in the case of commodity rates than in the class rates?

A. Well, supposing, the volume affected times the change in the rate ---

Q. You can put it as a mathematical formula, but I thought my question was quite clear. Is it still not clear to you?

A. I don't think it is, actually.

Q. Let us take a concrete case. If in the case of the West you had to decrease the Western class rate and the commodity mileage rates by the same amount, you would expect the disturbance to industry in Canada to be greater when the volume of traffic is greater, namely under the commodity rates? That is as self-evident.

A. The change would be greater, I suppose, in the amount of the rate affected --- in the amount of traffic affected.

Q. And the disturbance?

A. I would not agree it was necessarily a disturbance, actually.

Q. I did not ask you to agree that there would be a disturbance. I asked you if there was any disturbance it would be greater in the commodity rate, with a given amount of change, to get equality?

A. I don't think that follows, if there is a distinction between change and disturbance.

Q. I am not distinguishing between change and disturbance. Let us not spend too much time on it. I would have the thought that was almost axiomatic. Would you go this far with me, that when you come down to an equalization formula for the point-to-point commodity rates, there would

have to be consideration given to the disturbance to industry as a result of the change from the existing rate structure?

A. The same with any proposed change in a rate.

Q. Would you not agree with me that it would be extremely dangerous to bring about that change in the commodity rates abruptly?

A. No, I don't see that it would. As a matter of fact the equalization would probably be in the direction of rates which are now carrying the largest volume of traffic, and other rates brought equal to them would be carrying the smaller volume, and the disturbance would not be as great.

Q. I am not sure that I follow your answer. I am speaking now of commodity rates.

A. Specific commodity rates?

Q. Specific commodity rates?

A. That is right.

Q. And I gather that you feel that the equalization of those special or specific commodity rates --- or as I call them point-to-point commodity rates -- would not necessarily involve an important problem of disturbance to industry? Are you taking that position?

A. That is right; not necessarily involve ---

Q. At all events would you not agree that if a principle were to be laid down by statute the Board would have to be free to apply that principle in accordance with the evidence that might be given to it of the disturbance which might result?

A. I don't think that would follow. If the principle was laid down I suppose it could be assumed that that factor had been taken into consideration in framing the legislation.

Q. Then what you mean to say is, if industry had anything to say about the disturbance which a change in the

rate structure of this kind would entail, that that industry would have to go before a Parliamentary Committee in consideration of any bill that might ---

A. That wouldn't follow at all. If they had any legitimate complaint they could continue to apply to the Board for relief.

Q. That is exactly my point. If the statute directed the Board, in expressed terms, to bring about equalization, and you are not going to give the Board power to deal with that complaint, what purpose is to be served by having ---?

A. The Board has power to deal with these complaints. If there is unjust discrimination involved, or if there is need to make further distinction of the type of rate, it seems to me all ordinary considerations of fair dealing can be satisfied with those points.

Q. Mr. Darling, I do not want to argue with you, but either I am being obstructed or you are not answering my question. You want the statute to direct the Board to bring about this equalization?

A. That is so.

Q. But you do not want a discretion left in the Board as to whether they apply that equalization?

A. We have left places where the Board is to apply its discretion as to how the equalization goes.

Q. I am speaking about the same type of rate; I am not talking about different types of rates.

A. A single type of rate?

Q. Let me give you a concrete example. If the rate from "A" to "B" in Western Canada is \$1.00...?

A. Yes.

Q. That is a commodity rate ... and the territory from "C" to "D" in Eastern Canada is 90¢...?

A. Yes.

Q. And the statute directs the Board to bring about equality, you have said that you did not think it necessarily follows that there would be a disturbance to industry. Now I am asking you whether you think the Board should hear evidence showing the extent, if any, of the disturbance to industry as a result of equalization to rates?

A. If anyone has a particular complaint, they can still take it up with the Board.

Q. That is my point. Would you allow the Board sufficient discretion to say, after hearing evidence, we will not equalize those two rates?

A. I think the Board would have to grant the difference by postulating that the rates did not belong in the same type, or that there was unjust discrimination. What we say is if there are any differences, they must be substantively shown.

Q. It is too bad to have to go over all this again. You postulate, as you put it, a rate in Western Canada between two points; \$1.00 is the rate in Eastern Canada and 90¢ in Western Canada?

A. Yes.

Q. I am assuming there is no question of unjust discrimination involved, and no difference in types of rate; the same commodity moving under substantially the same conditions. The Board is directed, by your statute as you would have it, to bring about equalization. Now, would the Board have the power under your legislation to disregard the equalization principle, if it felt that the evidence of disturbance was such that it should not, in its discretion, equalize?

A. Well, if it was just the disturbance, in the abstract, without any further explicit reasons for that disturbance I would think they would have to adhere to the language of the Act.

Q. Let us get down to the disturbance in the abstract. Apparently we have to take this word by word. I am talking about a disturbance?

A. What is the disturbance? Can you make that concrete?

Q. A disturbance to the business of a particular shipper whose rate is going to be increased, if there is an increase. He comes along and says "That is going to disturb my market at such and such a place, and affect me competition-wise." That might conceivably be a serious disturbance to that industry. I am asking you whether the Board could consider, if the disturbance proved to be serious, that the equalization principle give way in those cases?

A. In the case you have mentioned it seems to me if the disturbance was considered to do to the market --- there is a proviso there can be drawn upon.

Q. Then what is your answer? Do you say the Board should have discretion?

A. In the manner in which we have suggested, yes.

Q. Is your answer that the Board should or should not have a discretion to give effect to this complaint of disturbance in preference to your statutory equalization?

A. You mean simply, and just by postulating --- at least by acknowledging --- a disturbance as such to prevent equalization, I would say the answer would be "No".

Q. Would it depend on the degree of disturbance?

A.. That would be a factor but the nature of the disturbance it seems to me would be controlling

Q. The nature of the disturbance?

A. Yes.

Q. Not the degree of the disturbance?

A. The degree of the disturbance might influence them in setting up the level at which rates were to be equalized,

in the first place.

Q. Then in the case of the dollar rate in the West and the 90¢ rate in the east, I suppose what you are saying to me now is that you might have to reduce the \$1.00 rate in the West to 90¢, rather than raise the 90¢ rate to \$1.00, if there was a disturbance?

A. If the 90¢ rate was a fair rate I think we would go actually on that basis.

Q. How would you determine what was the fair rate?

A. If the 90¢ rate was the one that moved traffic in Eastern Canada ---

Q. What if the railway needed more money?

A. That is a separate problem.

Q. But you would take that problem into your equalization?

A. After you have arrived at equalization you would then measure the total extent in that way, and deal with the revenue problem afterward.

Q. What you would do there is equalize at 90¢, and increase the rate to \$1.00 if it were necessary to get the revenue?

A. If it were necessary to get the revenue.

(Page 11420 follows)

MR. EVANS: Q. What is the difference between that and the increase of the 90 per cent. rate to \$1.00.

A. There is a very great difference, I think, in the manner of doing it, actually.

Q. But the result is the same?

A. In the case you mentioned, yes.

THE CHAIRMAN: I think the witness has said that, as the old adjustment proposed in your submission, any net loss should be made up by adjustment of the general rate level, and I assume that it would go up on percentage increases until it has given a net revenue; is that what you mean?

A. Yes, that is approximately what we had in mind.

MR. EVANS: Q. Well, I think we all have that in mind, but what I am trying to get the witness to say is whether his equalization proposal could ever give way on account of disturbances to industry, and I gather it is a matter of degree.

A. It is a matter of the nature of the disturbance.

Q. What do you encompass in the nature of the disturbance?

A. Well, if the disturbance is because it is now in a bad competitive position, it seems to me that the Board would allow a market competitive rate to be put in.

Q. Would the Board force that on the railways?

A. Not necessarily.

Q.. I gather now you are in the position of saying that the Board might have to force, in order to obviate this disturbance, might have to force the railway to put in a market competitive rate, or are you

going that far?

A. No, I do not mean that at all.

Q. Will you say what you do mean then?

A. I simply mean that if the disturbance is serious as to a loss of traffic, I do not see why the railways on their own initiative could not be depended upon to take care of that situation, and if there were no loss of traffic, then perhaps the disturbance is not as serious as it is claimed.

Q. Then, your approach to this thing is, you get equality, and if it puts the railways into trouble as well as industry losing its markets, then the railways are going to put in a competitive rate, and be put back on the basis of lacking equality again, and in the process merely lose some revenue, is that right?

A. I would not say that is a fair statement of it. We have said that if the equalization can not be carried through, the Board would permit departure from equalization, but not necessarily order a competitive rate to be established.

Q. I was not talking about competitive rates. You have two unrelated rates, and you are going to raise one, and you are going to decrease one, and if you decrease one, you are going to hurt the revenue of the railway, and if you increase the other one, you may cause a disturbance to industry. I am hoping that you will get away from competitive rates.

A. If a disturbance is not competitive, then what is it?

Q. Well, I will tell you that the disturbance might be a purely local disturbance in eastern Canada.

What you would do, you would force us in the end to give to Eastern Canada the old ninety cent rate back, and you get back to where you started from?

A. Well, we would not force you to do it. It would be in your interest.

Q. Well, you are back where you started from, aren't you?

A. Yes, in that particular case.

Q. Now then, on page four, the last paragraph on page four refers to the trend of the cases; it is about the middle of the page:

"This step would not involve ^a radical transformation of the rate structure, since there has been a noticeable trend in the direction of equalization for many years. A similar and even more pronounced trend can be noted in the United States experience where it has been fostered by changes in the Interstate Commerce Commission, notably in Class rates Investigation, 1939."

Now then, I think you said this morning that the class rates which were put on a new and equalized scale have not yet gone into effect?

A. They were held up pending the disposition of the application for increases.

Q. Has that case been reopened now?

A. I understand it was under consideration.

Q. Didn't it go back because of the objection of the western carriers who have now a higher rate scale than the eastern carriers?

A. I could not say as to that.

Q. My information is that that has now been reopened, and that is one of the points at issue. Now, the other thing is, isn't that equalized class rate scale dependent upon a uniform classification?

A. That is one of the things that is blamed.

Q. At the present time there are three classifications in the United States, are there not?

A. Yes.

Q. And that is one place where they are perhaps a little bit better situated than in Canada. Do you agree?

A. Yes, in the main.

Q. And isn't one of the very big difficulties in applying this new equalized class rate in the United States because of the need for developing a single classification?

A. I do not see that they are abandoning the attempt on that account.

Q. I said, isn't that one of the things that has held up the application -

A. Yes, I said that before.

Q. Now, in the last paragraph on page four, there is a suggestion, if I get it correctly, that while the cost of service would remain primarily as a determinant of the general level of rates, and would continue to be one factor influencing the assignment of commodities to the various classes in the freight classification, that your brief is adhering to the service principle, as it is now applied in Canada?

A. Well, I do not know that it is -

Q. You are in general in support of that service principle? A. Yes.

Q. Then you would not agree with British Columbia's contention?

A. Well, I have not studied their submission.

Q. You have not formed any views on that?

A. No.

Q. Has Alberta formed any views on it?

A. I could not say.

Q. Could my friend Mr. Frawley help me on that - whether you agree or disagree with the proposal of British Columbia to abandon the value of service principle in favour of cost of service principle?

MR. FRAWLEY: Well, I go along with whatever answers Mr. Darling gives.

MR. EVANS:

Q. On page six, near the bottom of the page, where you are dealing with the important changes in the rate level, you referred to Appendices A and B, and when you were giving your evidence in chief, you made an addition to that appendix. Now then, you have used in this appendix the first-class rates, have you not?

A. Yes.

Q. As a matter of fact, the difference in the class rates east and west is greater in the case of the first class rates than in most other classes?

A. That is right.

Q. The reason I mentioned that is that when you came to Appendix G - I think it was Appendix G, or Appendix D - in order to find the extent to which east-west rates, exceeded the Prairie standard, you used the fifth class.

A. That is so.

Q. You probably would have got a different result if you had used the first class?

A. It would have been much more in our favour.

Q. It would have been much more in your favour?

A. Yes.

Q. But in Appendix A, it would have been the reverse, would it not?

A. There was no attempt in Appendix A to show any comparison in the regional rates levels, and I thought I

made that clear.

Q. You are making a showing there in first class rates in Appendix A without asking the Commission to draw any conclusion as to whether the differences shown are typical of the differences in the class rates.

A. Well, I thought I qualified - I wanted to show the reasons for the various changes throughout.

Q. I merely wanted to know whether I understood you correctly. Now, on page 12 - this question of personal and regional discrimination, which was begun on page 11 and which goes over to page 12 and a subsequent page or two, I want to get quite clear just what you mean by this so-called personal discrimination and regional discrimination definitions. Would you say that your definition of personal discrimination is an arbitrary definition which seeks to distinguish personal and regional discrimination solely on the test as to whether there should be applied to regional discrimination the rule against unjust discrimination?

A. I am afraid that was a very long question.
--- the previous question was then read back as follows -

"Would you say that your definition of personal discrimination is an arbitrary definition which seeks to distinguish personal and regional discrimination solely on the test as to whether there should be applied to regional discrimination the rule against unjust discrimination."

A. It is still not quite clear.

Q. Well, your definition of personal discrimination is a rather arbitrary definition.

A. Well, if there is no disparaging note in the term, I agree with that.

Q. You simply picked it out as your own definition

without regard to whether it is commonly used as such or not.

A. Well, we do not say that anybody else uses it in that way.

Q. Am I to understand this to be the principal distinction, that in the case of personal discrimination the test which is applied under the present law is whether or not there was unjust discrimination?

A. Largely so.

Q. And in the case of regional discrimination, you distinguish that on the basis that there ought not to be so-called proof of detriment, or there ought not to be the necessity for proving what we now know as unjust discrimination.

A. We do not say there should be no proof of detriment; we merely say that you cannot use unjust discrimination to remove regional discrimination.

Q. Are you not in effect saying, "we have no quarrel with the way personal discrimination is dealt with under the Act and by the Board, and what we do say is that in these so-called cases of regional discrimination we do not want to have the same tests applied by the Board".

A. We say that some tests are not applicable to that type.

Q. In other words, you do not want them applied,

A. No, we would remove regional discrimination through the statute.

Q. Now, during your examination-in-chief, I notice that on page 11205, the Chairman asked you this question - you were dealing there without brief in connection with regional and personal discrimination - perhaps I should read you Mr. Frawley's statement:

"Mr. Frawley: That is page 67 of Part II, sir."

Incidentally, I think it should be 76 - "Q. What comment have you to make on what the Canadian Pacific says there?

A. Dealing only with the first point mentioned, differences in concept, on page 76 and extending over to the top of 78, there is some criticism of the definition which we have made in the part I have just read of our own brief, and I do not know just what the purport of this is. I have read it over several times to discover the meaning. I think it is either to say that the definition does not exist, or if not, I am unable to say what it is."

A. I notice there is a mistake in the transcript there at the last of my answer - "I think it is easy to say that the definition does not exist," I believe I said.

Q. Then the Chairman asked this question: "Q. Will you refer me again to the part of your own brief? A. It was on page 12 where we propose to make a distinction between what we call personal discrimination and regional discrimination, and I suppose this is the time to say that they are one and same thing."

A. I believe that this is also an error. - I said ^{an} that this was attempt to say that they are one and the same thing - referring to your brief .

Q. You mean to our brief?

A. Yes.

Q. I gather you are not saying they are one and the same thing when you are quarrelling with my suggestion in our brief that they are one and the same thing.

A. I think the point we were discussing in your brief was that you had said that regional discrimination was prohibited because it was personal discrimination, and it seemed to me that that more or less resembled saying that it is against the law to wear a bowler hat

because if you rob a bank wearing a bowler hat you will go to jail.

Q. I wish you would answer my question. I put to you a straight question. I ask you whether what you are saying there is what you interpret us as saying or what you as a representative of Alberta say, that they are one and the same thing.

A. We say that they are different things.

Q. All right, and would you say they are different because of the means by which you think the Board should remove the discrimination or the test to be applied?

A. They are differences in rate; they cannot be dealt with in the same way.

Q. I might refer the Commission to a question put to me by the Chairman, at page 11209, or it may not have been put to me; it was put to somebody; the Chairman said this:

"The Chairman: How do you say that the Board should apply it? Suppose you say Locality A is prejudiced by a rate given to Locality B, how are you going to show that? Mr. Frawley: We show that there is a different rate. The Chairman: That shows a difference but it does not show an unjust difference."

I would like to refer the Commission to Mr. Coyne's book, at page 407, where he has given some cases as to how the Board has applied this test about discrimination involving localities, and the cases here are Winnipeg Board of Trade vs C.P.R. 36, C.R.C. 100; Estabrooks Ltd. vs. C.F.A., 37 C.R.C., 134; and Paper manufacturers of Winnipeg vs. C.P.R., 31 C.R.C., 320. The test there is stated by Mr. Coyne to be this:

"One criterion of unjust discrimination as between

localities is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place", and that is substantially the same as the other cases where it was held that the eastern points had not profited at the expense of western points, and I thought that might help to clear up this difficulty about this definition. Now, is that the substantial argument of Alberta on this question, that in the case of regional discrimination no proof of detriment should be necessary?

A. I think perhaps we should explain our views as to the way that concept of detriment should be applied, and if we start with the class rates, on the one hand, which are of the widest generality and ending up with a specific commodity rate which is not susceptible to be extended to others, that is, just between the two points to which it applies, and as to the general class rates and the commodity class rates which are made to apply to whole regions, the concept of detriment is, as far as we are concerned, just a difference in the rate, but would actually never be operative if our two sections were incorporated in the Act. A person might have a competitive rate and another person might have a commodity rate, and before he could say that he was entitled to this competitive rate, he would have to show unjust discrimination, but as between differences that exist to-day in the class rates, we say that is not applicable, and had the rate structure been first altered at the time the Board took over, this whole situation would not have arisen.

Q. Now, you really make two questions necessary. Now, as between commodity rates that are unaffected by carrier or market competition, is your view that

equalization should be achieved by the Board without any necessity for proving detriment.

A. What is required to prove is that the person is eligible for the rates.

Q. Yes, two rates, the same commodity, one in Eastern Canada and one in Western Canada, you would make them the same irrespective of anybody being able to prove detriment?

A. Yes.

Q. When you come to compare the competitive rate with an existing commodity rate on the other hand, what then?

A. They would not be equalized unless a person were to prove unjust discrimination.

Q. Would you change the present law on that, because unjust discrimination only comes into competitive rates where competition is equal between the two points.

A. I believe they must go further than that - if a person is in the same neighborhood, although not actually subject to competitive -

Q. Let us take a clean-cut case where the carrier competitive rate is one dollar and the commodity rate in the west is \$1.10, you would then require proof of unjust discrimination to equalize?

A. Yes.

COMMISSIONER ANGUS: Q. If detriment has to be proved, must it be detriment to any person, or may it be detriment to a locality?

A. Well, except, sir, that it is more difficult to prove detriment to a locality.

Q. Well, assume that one locality says, "We could have developed as a distributing centre if it had not been for this"?

A. I think the conception of detriment, as I understand the Board's decisions, has been that actual detriment must be proven, and not theoretical or hypothetical detriment.

MR EVANS: There is there, I think, though, a fundamental difficulty. When you say actual proof of detriment, you do not suggest that the Board insists on a dollars-and-cents proving of damages in any sense?

A. No, I do not go that far.

Q. The fact is that if two producers are in competition with one another, and quite apart from carrier competition, the difference in rates is accepted as proof of detriment if his market is affected to the slightest degree?

A. If they were in the same market, yes.

Q. Now, I rather gathered from your evidence in chief and elsewhere in the brief that you were trying to suggest that the practice was to atomize these claims of detriment to the point where the small shipper could never succeed?

A. I was pointing out that in cases of regional discrimination -- I believe I used that phrase -- it would be very difficult for the small shipper to succeed.

Q. Well, if there was any proof of detriment it would not depend on the degree in dollars and cents of the detriment, would it?

A. Well, it should not, but it has, apparently.

Q. Do you say it has? A. Yes.

Q. Would you give me a reference? Perhaps Mr. Frawley could give me a reference.

A. I can give you a reference: The Town of Simcoe cases, where the applicant proved detriment, but the Board did not grant relief. I might say that the context of this case was an application of the Town of Simcoe for town tariff rates. Simcoe was not and is not now a town tariff point, and there was an application from the Town of Simcoe, supported by Canadian Cannerymen, I believe, that Simcoe be made a town tariff point; and, as I understand the case, they did show detriment in dollars and cents, but the Board said that it was not a very big detriment, besides which they could not decide their case on the merits of their detriment, because it was a whole general rate scale that was really attacked, and there was not sufficient evidence, which I think is further proof of our contention that unjust discrimination is not the proper technique to attack rate scales as such.

Q. You have read those judgments, have you? There were two of them.

A. There were two. There was one in 1920 and one in 1927, but the 1920 judgment was just delayed until after the rates inquiry.

Q. The 1920 judgment was simply a report of the Traffic Officer of the Board, and was quite short, and in effect it put off the final decision on this question until the general freight rates investigation?

A. That is as I understand it, yes.

Q. I suggest to you that in the second judgment the Board paid a great deal of attention to the fact that the matter had never been raised for a great many years, and that that was one of the moving points in the Board's

consideration as to whether relief was to be granted or not?

A. It seems to me if they had shown detriment it would not matter how long the thing had existed.

Q. You would not think so. Would you not think it would be some evidence of the extent of the detriment and whether it was really a detriment, that they had not pursued their claim for a great many years?

A. That would simply mean that it would be impossible to attack any town tariff rate which has been in effect since 1907.

Q. If you were run over by a motor car---

A. In other words, the longer we put off the re-organization of the rate structure the more difficult it is going to be to prove that it should be---

Q. You are really quite clever about that, but supposing I put this to you---

MR FRAWLEY: I do not think the witness -- well, all right.

MR EVANS: He is arguing, that is all.

MR FRAWLEY: Well, what is this but argument?

MR EVANS: Q. Well, if you were run over by a motor car wouldn't you have to bring your action within a reasonable time, within a specified time under the statute?

A. Well, as a matter of fact these rates still being charged today -- they were not appealing on the rates they were paying in 1911; they were appealing on the rates paid in 1927, it seems to me.

Q. And the Town of Simcoe did not pursue it on the second case, did they?

MR FRAWLEY: What's that?

MR EVANS: Q. The Town of Simcoe was not com-

plaining in the second case?

A. You mean it was the Cannerns themselves?

Q Yes.

A Well, that makes no difference actually.

MR FRAWLEY: I have sent for the cases. If we have to stop and argue out the Town of Simcoe cases---

MR EVANS: I did not bring in the case.

THE WITNESS: You asked me for a case.

MR EVANS: Q. I did, surely. Now, on page 13 a statement is made in the second complete paragraph, when you are talking about complaints on regional discrimination, that

"the complaints were rejected since obviously no question of personal discrimination was involved." Now, I would like to have that clarified. Would you tell me what you mean by that?

A. In those cases, in at least the first three, the complaints of western Canada against the difference in rates between western Canada and eastern Canada were obviously about a rate within western Canada as opposed to a rate within eastern Canada which was lower, and, as that term discrimination is used, there was no unjust discrimination, for there was no connection, at least in the sense meant by the Board.

Q. Then you mean this, that the complaints were rejected since obviously no question of unjust discrimination was involved; is that what you mean by that sentence?

A Yes.

Q So that in your brief, then, personal discrimination can be said to be synonymous with unjust discrimination?

A It amounts to about that.

Q. Now, what about the numerous reductions that were

made in the so-called disparity between rates east and west? Those complaints were not rejected completely on the ground that no unjust discrimination was shown, were they?

A. No, but the request, as I understand it, was for equality.

Q. And you had a large number of---

A. The difference in the percentage increases was in effect in a great many cases merely to preserve the existing differences, which would otherwise have been thrown out by the horizontal percentage increase.

Q. Can you find decisions on that?

A. I do not say that was the purpose of them, but I said that was the effect.

Q. Quite obviously it was not the purpose of them. The fact was that they actually reduced the difference or disparity between the rates by these different percentage increases over a long period of years?

A. If you will look at Appendix A you will note---

MR FRAWLEY: Page 52.

THE WITNESS: The difference before March 15, 1918, is 18 cents, and at September 13 -- I am looking at Ontario and Superior, but let me take the other one. The difference between Ontario-Quebec and the prairie district is 22 cents prior to March 15, 1918, and---

MR EVANS: Q. Where are you looking at?

A. I am looking at the condition of the rates prior to March 15, 1918, and the Ontario-Quebec rate is 46 cents, and the---

Q. That is the Maritimes, isn't it?

A. No, it is also the Ontario-Quebec. It carries down unchanged from the top of the page.

Q. Yes?

A. And the prairie rate is 68 cents, and the difference is 22 cents.

Q. That is right.

A. Prior to the reductions, at their highest point, September 13, 1920, the difference is $22\frac{1}{2}$ cents.

Q. Yes?

A. So that in spite of the fact that there have been smaller percentage increases in the west than in the east, in this case -- I do not say that is typical for all of them -- the differential has just remained the same.

Q. Yes, but in 1918, on March 15, 1918, the difference was 25 cents, was it not?

A. That is right. That was before; that was perhaps where we should start, when the increases were the same. At December 1, 1921, when the rates got back to normal, the difference was 19 cents.

Q. So that is what you meant when you gave the answer you did. On page 14, at the top of the page, near the end of the first paragraph, you are there still speaking about this question of attacking regional discrimination and the difficulties, and you say:

"The differences themselves" --
that is, presumably, the differences between the rates east and west?

A. Well, all differences; however, that is---

Q. Well, we are primarily concerned with this?

A. Yes.

Q. "The differences themselves have been justified by the Board by reliance upon several factors, e.g. cost of service, density of traffic, competition, historical circumstances, or mere geographical dissimilarities."

Now, which of those five matters would you drop in applying the test as to whether regional discrimination as you propose it should be eliminated?

A. I do not think any of those should be a factor in the broad outlines.

Q. Well, there must be some weight given to cost of service, must there not, under your--

A. Not on individual rates.

Q. No, no, not on individual rates; that is all you mean, then?

A. Yes -- well, no, the fact -- the sentence is, the differences have been justified by reliance on several factors, cost of service -- and I think perhaps we could refer that to the mountain differential.

Q. Then you would eliminate cost of service?

A. That is not a factor in the making of individual rates.

Q. You think not? A. Excepting that it might determine whether a commodity goes higher up or lower down in the classification. That might be a factor placing it in the classification.

Q. If, for example, you had a commodity rate in the west of \$1.00 between points A and B -- to go back to that example -- and a rate in the east of 90 cents between points C and D, otherwise unrelated, but if you could show that in that particular area the cost of service justified the difference in the rate in the west, you would not accept that as an answer to equalization?

A. No, the only place we would accept that was on the rate structure as a whole in the east, where the general departure from equalization would be, not of particular rates.

Q. Now, in the matter of density of traffic, would

you permit a rate to be made by a railway in order to promote traffic on a line that has thin density which would be lower than you might find on a line in a different region having a high density?

A. In the sense that there might be a developmental rate.

Q. Well, to develop traffic for the railway?

A. No, I do not think we would consider that as a factor. I do not regard that there are many rates as such in existence.

Q. Well, frankly, I do not know, but I am merely asking you whether you would under any circumstances justify the making of a rate which was intended to develop traffic, and I am assuming the rate is compensatory -- there is no question of that. You say you would not permit a railway to make a rate with the avowed purpose of increasing the traffic on a thin-density line which would be lower than it would be other places in Canada?

A. I do not think that should forbid the application of equalization. It is certainly not a factor that I have been able to find very active in rates at present.

Q. Well, I am asking you whether you would prevent it, prohibit it, or whether you would not? Would you?

(Page 11450 follows)

A. I think we might say that it could not be permitted as such unless the Board were to find that there were special conditions warranting the establishment of a separate type which would perhaps allow that rate to take effect but there are a number of factors which they would have to take into consideration there.

Q. You would not solely on the density of traffic permit the railway to make a rate which would develop new traffic to fill up that density?

A. Unless they were prepared to extend that rate.

Q. Would you or would you not permit a railway to make a rate to develop traffic on a thin density line which was at a lower rate than would apply in some other region where there was a high density?

A. Unless there were some special conditions which the Board felt justified that departure, no.

Q. Other than density of traffic?

A. Other than density of traffic.

Q. Can't you say whether, other things being equal, you would not permit a railway to make a rate based on density of traffic, to get more traffic? Surely you can say on that, can't you?

A. Yes, it amounts to that.

Q. Then competition - you agree that competition cannot be an answer to equalization?

A. With exceptions, yes.

Q. Now, historical circumstances - what do you mean there?

A. I mean the fact that rates - in many cases the rates had separate origins in the different parts of the country and for many years and perhaps to some extent still differences existed which date back to their early circumstances. They are differences which nobody today

would claim were related to contemporary circumstances, although it is not quite clear what the reason for the difference is.

Q. What would you give me as an example of what you have in mind there?

A. Well, for example, in the lumber commodity rates in Ontario and Quebec they are much lower than the Prairie and it seems they were established by merely taking the scale which had existed in the Maritimes Provinces and plunking it down in Ontario and Quebec.

Q. You would not have anything in your mind about the scale of class rates in the East due to the historical water competition or something of that kind?

A. You mean the standard class rates?

Q. Yes.

A. That would be one of the factors.

Q. That would be one of the things you had in mind. So that once the condition which gave rise to these rates in the beginning had become a matter of history, that is to say, some years had passed, then you would overlook the original reasons and refuse to give effect to any of those historical circumstances when you were dealing with rates?

A. If they were not still controlling today.

Q. That is what I mean, if the historical circumstances which you mention^{were} controlling today, you would give them the same weight as you would in the beginning?

A. It depends what the circumstances were. The circumstances might be some of these previous factors.

Q. I am speaking about what you mean by historical circumstances.

A. I mean differences in rates of which the origin is more or less lost in the past.

Q. If the historical circumstances giving rise to the difference still exist , then you would give effect to them?

A. If it was not one of these others we said we would not give effect to, yes.

Q. I am talking about historical circumstances. We have gone through cost of service and density of traffic.

A. Well, historical circumstances sort of covers all of those in the sense that there are no historical circumstances as such. There must be one of these other factors which must be analizable into that.

Q. Then, we have said all we can about that. How about mere geographical dissimilarities? What did you have in mind there?

A. I refer to the fact that if a rate is higher in the West than the East, merely the fact that one is in Saskatchewan and the other in Quebec, is considered sufficient reason to say there are different conditions.

Q. You mean then that regional differences are no longer to exist unless one of your exceptions applies?

A. That is right.

Q. Now then, at the bottom of the page when you have been talking about this difficulty in removing regional discrimination under the Act as it now stands, you say that the absence of a plain statutory direction ^{that} there must be no regional rate discrimination is sufficient to explain the Board's position and so on and then we come to this paragraph: "The above interpretation of the issue is borne out by the fate of previous attempts to gain recognition of the principle of regional discrimination without being required to show explicit prohibition in the statute" and you say that the best instance is provided by the history of Order-in-Council P.C.886. Now, that was an Order-in-Council which

directed the Board to make a general freight rates investigation in 1925?

A. Yes.

Q. Now, did not that Order-in-Council by the language it used, simply tell the Board to bring about equalization under the law as it then stood?

A. That is right.

Q. Now that, to some extent, was unlike the previous cases in which the Board reduced the disparity without any Order-in-Council and under their ordinary powers in the Western Rates Case, different increase cases and so on?

A. You say there was a difference in the Board's powers on those two occasions?

Q. All I am saying is that you say the best instance of this difficulty about regional discrimination was this Order-in-Council and the Order-in-Council simply asked the Board to bring about equality under the law as it then stood. Now, I was asking you whether the Board had not taken substantial steps towards equality in these earlier cases without any such direction as an Order-in-Council?

A. That is true, to the extent that these differential percentage increases were applied.

Q. I just wonder whether you were being quite fair in arguing the Order-in-Council that had that restriction in it is the best instance of governing regional discrimination?

A. What is the restriction? I am not quite sure what you mean by that?

Q. The restriction was that it should bring about equality under the law as it now stands.

A. Didn't they decide the other cases under the same Act?

Q. Well, I don't know whether you and I are going to get through this this week -

MR. FRAWLEY: It seems to me the witness is asking quite

reasonably for a little clarification.

MR. EVANS: Now, supposing we go all over this again. You say the best instance of this difficulty you are speaking about is provided by Order-in-Council P.C.886?

MR. FRAWLEY: By the history of it.

MR. EVANS: And you say this Order-in-Council contains probably the most explicit reference to equalization of freight rates as a matter of Government policy, and then on the next page you give the three paragraphs and then, further down the page, it says about the middle of the paragraph beginning there "The interpretation of P.C.886.." Do you see that?

A. Yes.

Q. "by the Board in the 1927 investigation apparently turned upon two phrases to be found in the passages just quoted, /viz: to the fullest possible extent and under substantially similar circumstances and conditions' ". Is that clear now?

A. Yes, I see where you are quoting.

Q. "The former pbrase would appear to have been taken to mean 'to the fullest possible extent permitted by criteria already applied by the Board' " Are we clear on that point?

A. Yes.

Q. Then you offer that as an example of the difficulty you had in getting these so-called regional discriminations removed?

A. In view of the language of P.C.886 which quite explicitly, called for equalization.

Q. I suggest to you that the plain inference of that is that the reason you did not get some relief in the 1925 investigation was because of that limitation "under substantially similar circumstances and conditions"?

A. That is what we say here.

Q. I am trying to take you bit by bit because we get at cross-purposes unless I do. You say that is the best instance of your difficulty really and I am asking you whether you would not find that under the same law the Board did in fact with those limitations remove a great deal of this so-called regional disparity in those earlier cases?

A. Well, I said before that what they did in those earlier cases was just what they did. What we say here is that this illustrates the difficulty with which we contend in obtaining equalization.

Q. And I am suggesting that it does not illustrate the difficulty because you could just as easily have illustrated it by pointing to cases where you did get some relief?

A. Well, there would be no difficulty and the difficulty is what we are illustrating.

Q. It is under the same law too. Now then, at page 16 and through pages 17 and 18 you have contrasted the position in Canada with the position in the United States, and at the top of page 17 you refer to a section of the Transportation Act, and, having referred to subsection (b) of Section 5 of the Act of 1940, you go on to say how the Commission interpreted that amendment. Do you see that?

A. Yes.

Q. Now then, is not the direction to the Commission in the section to which you refer in substance the same kind of direction which is contained in P.C.886, that is to remove inequalities so far as you could under the present law?

A. It may amount to the same thing; I have not read it over with that in view.

Q. So that whatever may have been the view of the

Commission, the Commission was still under that direction bound by the law as it then stood in questions about equality?

A. Of course, when we say "The Interstate Commerce Commission interpreted this amendment" we also refer to amendments to Section 3 upon "Region, district, territory".

Q. Yes, but in the case of Section 3 it did not change the test. That is to say, the test was that there should be no undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage as between localities and regions, so that they did not change the legal test. They only added some words to make it clear that while applying the same tests they were prohibiting unjust discrimination as between regions and localities?

A. I do not know that that has been understood exactly as it has been understood in our Act. I think the Commission's interpretation has been broader.

Q. When you say "I don't know", are you asserting that it is different?

A. I believe it is from the judgment that was made in this particular case.

Q. In that connection, I would draw your attention to the language in the quotation from the Class Rate Investigation Judgment right at the end of the quotation:

"This means that such discriminations as those mentioned which result from differences in the methods of distributing the general rate burden in the several rate making territories, or for any other cause, if not justified upon proper consideration of recognized elements of rate making applied in the light of the amended law are unlawful and should be corrected".

Now, I suggest to you that that is in substance, anyway, what the Board did in the general inquiry here in 1925 and 1927?

A: I would disagree with that to the extent that these words "if not justified upon proper consideration of recognized elements of rate making" be deleted. Now, I thought the Commission went a long way towards taking what are merely historical differences in rates, and if I recall the Judgment, the reason for the rates was that the regional discriminations that had been shown by the railways in these territories were not sufficient to justify the actual difference in rates. I think that is considerably different from our situation in the 1927 investigation.

Q: Well, now, would you suggest that that decision meant that the Interstate Commerce Commission felt itself bound to remove regional discrimination as you define it without proof of prejudice or disadvantage?

A: Well, the prejudice or disadvantage was of the general type as applied between regions, that is to say, the very fact that rates were higher in one region in the absence of other conditions the difference should be taken out.

Q: Now, on Page 18 the statement is made after these quotations and so on at the end of the paragraph following the quotation:

"So that the concept of regional discrimination can now be said to be firmly established in the United States"

Now then, in the transcript at Page 11245 you were giving your evidence in chief and you were asked by the Chairman this question:

"You say 'all discriminations in the form of undue or unreasonable preference

or advantage'?

A: Considered collectively, sir, as one reason opposed to the other."

A: "Region" I think that should be.

Q: Then you gave the interpretation of the Commission and the explanation of the Senate and then you referred to this international class rate decision towards the end of the page in these terms:

"This decision was upheld by the United States Supreme Court in State of New York v United States so that the concept of regional discrimination can now be said to be firmly established in the United States. We do not mean by that that there is mile for mile equalization. We do not mean that the concept is firmly established; we mean that it has become part of one of the tools of the Interstate Commerce Commission".

Now, was that misreported?

A: It is not very clear.

Q: It is almost directly contradictory.

A: Perhaps I might read an excerpt from the Commission decision in that investigation.

Q: No, I don't want you to do that unless you feel you have to. Do you or do you not mean that the concept is firmly established, because in one place you say you do mean that and the other you say you do not?

A: I think the meaning there should be that it is established along with the other concepts regarding discrimination, yes.

Q: Well, then, what you mean is that regional

discrimination as distinct from personal discrimination has not been established as a concept in the United States?

A. I would not agree with that, no.

Q. Well, I want to know what you are saying. I want to know which is right. You see, you say here, "This decision was upheld by the United States Supreme Court in the State of New York v. United States, so that the concept of regional discrimination can now be said to be firmly established," and so on. Then, dropping a sentence, "We do not mean that the concept is firmly established; we mean that it has become part of one of the tools of the Interstate Commerce Commission."

A. In that last, we do not mean that it has been firmly established. I do not mean that there is in effect equalization complete in the United States today. I thought perhaps that meaning might have been taken from the statement. I do not mean that.

(Page 11462 follows)

Q. Just what do you mean?

A. I mean that the Interstate Commerce Commission has extended its criteria regarding discrimination to include regional discrimination, discrimination between regions.

Q. And you say that that has not been the case in Canada by the Board?

A. Not to the same extent by any means.

Q. Do you say that it has not been the case in Canada?

A. I don't know that it is entirely a negative there; there might have been.

Q. I did not want the impression to be created here that there is a vast or marked difference between Canada and the United States unless you were prepared to say there was. Now, I would like you to say?

A. Well, I think there is very definitely a difference. I think the difference is simply in the continual refinement of section 3, subsection 1, of the Interstate Commerce Act. They have continually added terms to it. We might consider that in this country as well as in the States there has been a general attempt to deal with this problem of regional discrimination, and in the States the method has been to gradually broaden the concept of unjust discrimination. Our difference is that we are advocating equalization in the statute.

Q. But they have not got equalization in the statute to any greater degree than we have?

A. No, I do not think it appears as such.

Q. Now, at page 18 you have been setting out the chief grounds for demanding equalization, and in item 3 -- I do not want to take these one by one; I want to skip as many as I can, but I want to get this clear; you say in

item 3;

"Differences in regional costs and traffic densities are not adequate standards by which to determine regional rate differences. Revenues and investment must also be taken into account."

Now, have you considered the suggestion made by Manitoba, that Manitoba was not prepared -- I hope I am paraphrasing it correctly -- to pay any rates which are not justified by the services which the railways provide for the region in which Manitoba is? I wondered whether you agreed with Manitoba in that?

A. Well, I don't know that I understand what they mean by that entirely.

Q. Well, did you hear Mr. Moffat give evidence? I won't bother you if you did not.

A. I heard some of his evidence, yes.

Q. You did not hear him on that point?

A. I have no recollection of what his words were.

Q. Well, I won't pursue it. How about the position of the Maritime Provinces, taking into account your operating ratios and the earning on the investment and so on? If it were shown that the two railways operating in the Maritimes operated at a substantial loss, would Alberta advocate an increase in the rates there rather than equalization?

A. We are not suggesting that the east be divided up into separate districts for equalization purposes.

Q. Well, supposing the effect on the Maritime Provinces was such as to depress the over-all return in the east, would you expect that the east should have its rates raised, including the Maritime Provinces? Is that part of your plan?

A. That is in line with what we have said before,

about the extent to which regional differences should be permitted.

Q. If the Maritime Provinces themselves were, as they are in the case of the Canadian National, a separate region, you would not take that into account separately?

A. No, not for this purpose.

Q. Now, do you recall any exhibits in the 21% case?

A. I certainly recall some, but you will have to tell me which one before I can remember it.

Q. I have in mind 220, in which it was shown that the Canadian National, which has the Atlantic region separate from the eastern region, in 1946 had a deficit of \$8,386,000 against net operating revenue of \$37,000,000 in the central region and \$12,738,000 in the western region, and I was going to ask you, if this were a typical result in the Maritime Provinces, what would your view be as to how those results should be reflected in the rates?

A. No different than what I have said.

Q. Now, item 4 of your grounds for the removal of regional differences suggests that competitive conditions of earlier periods should not influence the level of class rates today. Now, I gather from an answer you gave me earlier that if the competitive conditions operated with the same force today, you would still give effect to them?

A. As competitive tariffs.

Q. Well, in the general level of rates?

A. No, we would say that any rates to meet competition should be published as competitive rates.

Q. When we were talking about the historical circumstances on page 14 I thought you agreed with me that those historical circumstances, if they were present with the same force today, would be given effect to in the rate level?

A. As I understand it, they are, in the competitive rates. Isn't that---

Q. Finish.

A. I have finished, but maybe I did not understand your question.

Q. Well, let us go back to the class rates in eastern Canada. If those class rates were affected by water competition when they were put into effect in the beginning, is it your view that those class rates should no longer be treated as having been affected by competition, and that therefore the west, which has not got this competition, should have its scale reflect that original competition?

A. As to the difference in the class rates east and west, we do not say that that reflects the contemporary competition.

Q. Well, if it does reflect the contemporary competition, do you still say that that should no longer be permitted to justify a difference between the east and west?

A. That is right. Those rates should be published as competitive rates.

Q. Even though the competition is the same in force as before?

A. Yes, although the competition is -- I might say that we do not consider that the competition of 1907 is the competition of today.

Q. So that you really now want to qualify an answer you gave to me earlier on this matter of historical circumstances, because we mentioned those class rates, and you said that was one of the things that you had in mind there, and you said that the historical circumstances if present today would give the justification. I gather now that you are changing that, and you are

saying that in the case of these class rates affected in their first beginnings by the water competition they would no longer be permitted on a level that would reflect that competition?

A. Well, I don't know. Are you considering these things on 14, the things which we say should justify? I say this is referring to what has been justified, the justifications that have been given for the differences in the past.

MR FRAWLEY: By the Board.

THE WITNESS: Yes.

MR EVANS: Q. If you look back at the transcript you will find that I asked you which of those you would remove, and I asked you whether you would give me examples of historical circumstances justifying these differences?

A. That is right.

Q. And you then told me that you would retain the effect of historical circumstances if the circumstances remained at present in force.

A. Well, not as historical circumstances. The rates today may reflect always contemporary conditions, not historical conditions. All that I was saying about historical circumstances here was the justifications that had been relied upon to explain present differences.

Q. Then I am putting to you exactly that, if I understand you correctly; I am putting to you the case of the class rates, which in their beginning were affected by water competition, and I am asking you whether you would not consider that that difference, if any, could still be justified by that historical competition as long as the competition still remained?

A. Well, as a matter of fact, the competition does not remain. The rates are now controlled by the Board,

the class rates.

Q. I would like an answer to my question. I am not arguing whether it remains or not. I said, if it does remain, is it your view, if it does remain?

MR FRAWLEY: If the witness does not accept the premise, then I suppose you are entitled to an answer upon the premise, accepting your premise. As long as that is clear, he can answer.

MR EVANS: Well, if he prefers not to answer---

MR FRAWLEY: Not at all. We are here to answer all the questions in the world, Mr. Evans, and we don't want it said otherwise.

THE WITNESS: I can only repeat what I have said, that if there are competitive conditions today they should be met by competitive rates.

MR EVANS: Q. Then in other words you are saying that we should not be able to justify a difference in the class rates because of competition still existing which in the beginning affected the whole level of those rates?

A. No, we have a different method for dealing with that.

Q. On page 22, if I understand that paragraph near the bottom of the page, beginning "A class rate structure of this type involves an element of volume discrimination" -- if I interpret that correctly, you attack the principle of the town tariff in distributing class rates as containing an element of volume discrimination which should have no place in the rate structure; am I right?

A. Yes.

Q. Now, in that regard you distinguish between two kinds of special rates, do you?

A. What kinds?

Q. Commodity rates on the one hand and class rates on

the other?

A. That is true, yes.

Q. So that you think different principles should be applied to class rates and commodity rates which are within the category of special rates under the Railway Act?

A. In general the application of class rates is more all-pervading than the commodity rates, yes.

(Page 11471 follows)

Q: Well, you would like it to be all-pervading. You are complaining that this is not all-pervading enough?

A: That is right. We do not think there was any justification for rates made in the manner class rates are, to contain these exceptions.

Q: Well then, would it make any difference to you if the present distributing rates attained the class rate scale and commodity rates put in on a lower level operating on these distributing points. Do you still object to that?

A: I do not quite understand your question.

Q: Well, you do not like these distributing class rates because they show volume discrimination. That is your point. Now then, you assume that you eliminate these rates as class rates and have one all-pervading class rate scale. If the railways should publish the same rates from the same point lower than the standard scale, would that also be objectionable in your case against volume discrimination?

A: Do you mean as specific volume rates?

Q: Yes.

A: We have no objection to commodity rates as such as long as they are equalized.

Q: Well, do not commodity rates published from the distributing point include the same discrimination as commodity rates published from the distributing point?

A: No, if we have unified the class rate scales and received then about what is equivalent to the distributing rates, if there are other commodity rates lower than that which are published we have no objection to that.

Q: Would not that involve volume discrimination to the same extent?

A: It will, yes, but it will be much more limited.

COMMISSIONER ANGUS: What do you mean by the commodity rates being equalized?

A: Well, we mean that the different mileage rates in the first place, sir, should be the same. The same scale should apply in both regions.

Q: Do you mean that they should not be between specific points but should apply everywhere?

A: No, I am speaking of those which are now made as mileage scales. We also ask that those which are applied point to point on similar types of rates and similar commodities be equalized.

Q: But you have nothing to say about the selection of the points between which they should apply?

A: Well, I think we said something there, sir, as to the types of commodity rates which would be permitted depending on the stage of manufacture or the type of commodity. From Page 28 forward - possibly it was at the front of the brief, if you look at Page 3, sir, part four at the bottom of the page, that section more or less deals with the way we would distinguish between types of commodity rates or suggest manners in which that would be done.

Q: I am still not quite clear what the equalization implies. Does it mean that if there is a commodity rate between point A and point B in one region, then there must be a similar commodity rate on the same commodity between point C and D equidistant in another region?

A: On the general commodity rates, sir, those published on mileage scales and applicable to all

circumstances within a territory, that would be the case.

Q: Applicable to all circumstances in the territory?

A: Yes, and as to the specific scales, we merely say that such commodity rates as are granted should conform to the same formula according to type.

Q: It is only the latter which would involve volume discrimination, is it?

A: Well, volume discrimination, sir, is rather a broad term. We are not 100% in favour or opposed to it. We think it should be limited to some extent.

MR. EVANS: My point was really this, Mr. Darling, that you have really attacked the principle of distributing class rates pretty generally on the ground that in some way there is a peculiar form of volume discrimination there?

A: Yes.

Q: Now then, let us suppose that the Board on the general inquiry in pursuance of any changes in legislation that might be involved, and in pursuance of Alberta's submission should say: "We are going to retain the standard rates and we are going to equalize them and we are going to do away with the distributing class rates but we are going to suggest to the railways that they publish all these rates from the distributing point as commodity mileage rates or specific point to point to commodity rates", would you still object to that?

A: Well, I don't understand your illustration. If they are going to publish a distributing rate as point to point rates, there are several thousand items in the classification which are covered by the distributing rates. Are you going to publish each one from a different rate?

Q: From the standpoint of volume discrimination

the same position would exist, and all I am suggesting to you is that the attack on the distributing class rates on such a ground that they have some peculiar form of volume discrimination is in fact an attack on any rate below the standard rate?

A: Not at all. The distributing rates apply to all commodities regardless of the type of manufacture at the point of distribution or the volume of traffic or anything. They apply to the single items in the classification. They apply to particular commodities and in many cases they apply only to places to which those commodities move.

Q: It is only a matter of degree?

A: It is quite a difference, I would say.

Q: A difference in degree?

A: Well, I think it confers a very definite advantage on a point if it has that one of commodity rates, if you like to put it that way, as opposed to another point, a selective one?

Q: I am talking about the principle of volume discrimination, and I asked why you pick out the distributing class rate as evidence of volume discrimination of the objectionable kind?

A: Well, it is objectionable simply because it extends far beyond the specific traffic involved and in fact confers lower rates more or less automatically, regardless of any need for those rates.

Q: Based on volume?

A: Well, that is the justification for it. You say that you give these rates only when the volume warrants it.

Q: Distributing class rates only when the volume warrants it?

A: That is one of the positions taken in defence of them, as I understand it.

Q: May I suggest to you that there is more likely to be a commodity rate established based on volume or offering, than there is such a scale as the distributing class rates?

A: That is quite true, surely.

Q: So that what I am saying to you is that if you condemn the distributing class rates on the basis of volume discrimination, that condemnation extends to and is increased in the case of commodity rates?

A: We simply say it is a type of volume discrimination which we do not very highly regard. I think we explained we are not opposed to volume discrimination 100%.

Q: Now then, before we leave this question of volume discrimination, I think you will agree with me that there are already substantial prohibitions under the law as it now stands against volume discrimination?

A: What sections are you referring to in particular?

Q: Would you agree with the generality of that?

A: There is, I believe, some in the section about undue preference.

Q: Anybody, any shipper in a given area where the rate is a factor between points or on a commodity basis, can get that rate regardless of the volume?

A: Yes, volume discrimination is prevented if there is personal discrimination involved.

Q: I am only saying there are limitations on volume discrimination?

A: Yes, surely.

Q: And I suggest to you that there is another

limitation. In the Board's Judgment they have refused heretofore to make rates for trainloads lower than rates for carloads?

A: That is true.

Q: And that also involves a question of volume discrimination?

A: That is right.

Q: Now then, I was then coming to the references to the case which we dealt with in the Town of Simcoe, Page 23. Now then, we have dealt with that and I do not want to take you over that ground again, but I want to give the Commission some references. There were two Judgments in that case. The Town of Simcoe Case was the case to which the witness referred to earlier in the discussion, and it is set out in Page 23 of the brief. The first Judgment was in 10 J.O.R. & R. at 500 and the second in 17 J.O.R. & R. 327. Now then, in the second Judgment, as I pointed out, the town did not make the application. At Page 330 of the Report in J.O.R. & R. the report of the Board's traffic officer appears to make it clear that there was no unjust discrimination involved, and then at Page 330 also a reference was made to the fact that there was no complaint for more than half a century and that that was evidence and these were the words used in the Report: "That there had not been any great measure of hardship or detriment" and on Page 331, the following paragraph appears:

"In my opinion the present situation should not be changed until there is evidence of a more widespread demand for it together with evidence showing clearly that detriment actually exists in the present rate situation."

Now then, Appendix D, and reference begins on Page 25 in the brief, I think, to that Appendix, in Appendix D the point is being made that the present fifth class rates, that is the two factor rates between East and West through Fort William produces rates greater than the same mileage on the prairie standard tariff?

A: That is right.

Q: Now then, the result is different, is it not, if you compare the through rates with the eastern standard tariffs?

A: Yes, considerably different.

Q: So that the effect would be that the through rates between eastern and western Canada in these examples, if you apply the eastern standard instead of the prairie standard, would be found to be much lower than the eastern standard?

A: As to that, I might say that the eastern scale was only recently extended beyond 1000 miles and it was extended at a flat, or I should say a constant rate of increase without any tapering whatsoever.

Q: No taper?

A: No tapering. From 1000 miles to 2150 miles and in the mileage block from 1000 miles to, I think, 1025 or 1050, there was an increase of 8¢ in first-class rates and the increment is 8¢ when you get to the end of the scale, which accounts for the very rapid increase in that scale, and we think that disqualifies that scale.

MR. FRAWLEY: What is the reference for the 1949 change?

A: Well, it was published in the tariffs. I have just taken these from the scales that were published at the time. The rates were extended to Newfoundland, and I think the lack of tapering might have been not unconnected

with that fact.

MR. EVANS: Well, the only point I am making is this, that to apply this as a test on the prairie standard is probably no better than the other case. I would take it that the prairie standard rates were developed for the prairie territory and the eastern standard rates were developed for the eastern territory?

A: I do not think I would accept that as a conclusion.

Q: Then do you say that the prairie standard rates were developed for the through movement into and out of eastern Canada?

A: No, but I do not think I can argue that the prairie standard scale is something that is accurately adapted to the eastern movement.

Q: I do not think I used the word "accurately".

A: You were trying to suggest that the reasons for the tapering ^{were due, to} perhaps/the fact that the prairie was level or something like that.

Q: Have you looked at the proposals in the Canadian Pacific brief for the equalization as it would affect the interterritorial rates?

A: Yes.

Q: And do you recall that apart from some extreme points in this blanketed territory east of Fort William, that there will be very, very rare cases in which the new uniform distributing class rate scale or the through mileage would be exceeded by the new East-West rates?

A: I did not know you meant to apply the distributing rates between east and west which is something.

Q: I did not say so.

A: The new distributing scale, did you not say?

Q: I said there would be very definite cases where the new equalized distributing scale would be exceeded by the new interterritorial rates.

A: Yes, I recall that you met us on that point, but I am afraid that I cannot give any final opinion until I see the rates.

Q: I am not asking you to. You seem to be wanting to make a little argument with me. I am merely asking you if you had seen it.

A: I have, yes.

Q: And if that should happen as it is suggested there -

MR. FRAWLEY: What is the page, Mr. Evans?

MR. EVANS: Page 57 of Part II of the Canadian Pacific Brief. Would you not think that that had gone a long way to meet this difficulty you speak of?

A: That is right.

MR. FRAWLEY: You will have time to redeem yourself there.

MR. EVANS: My friend can be facetious if he likes to, but my submission to the Commission is this, that they are coming to this Commission, they are putting forward an elaborate new system of regulation based on equalization without waiting to see the proposals that are made and when we put a proposal to them, they treat it as a sort of joke, as though we were not serious about it.

MR. FRAWLEY: I certainly am serious about coming to this Commission before going to the Board under P.C.1187.

MR. COVERT: Let us take it they are both serious.

MR. FRAWLEY: Some things have been made abundantly clear; that is for sure.

MR. EVANS: Now on Page 29, after setting out near the top of the page the first complete paragraph that it is commonplace to make lower prices on goods sold on larger volume, the statement is made -

MR. FRAWLEY: I wonder if I might make one suggestion and I will leave it? I ask my friend now, as I think we have asked him two or three times, that if he can, he should place before this Commission his proposals with regard to equalization. Certainly we have spent a lot of time, perhaps more time than some of the other provinces, and we certainly think, and we think not mistakenly, that it was the business of this Commission to go into this matter under its terms of reference. My friend has referred in his examination to the Canadian Pacific's scheme of equalization, so I ask him for the general enlightenment of everyone that he place before this Commission his plan of equalization, and he will say "I have to wait until the Waybill study is finished". If that is so, we then have not got it here for the assistance of the Commission, but I do ask him. Apparently he is cross-examining my witness as to whether or not his scheme when we finally see it might go a long way to meet all the things that Alberta has proposed in its brief, and so, quite seriously, and in a friendly way, I do ask the Canadian Pacific to bring to this Commission its equalization study.

MR. EVANS: That is probably the third or fourth time that Mr. Frawley has made that suggestion, and I would like to set at rest once and for all the doubt that appears to exist in his mind. The equalization study is not complete, and I can tell him that our best forecast of the moment is that we will be in a position about a year from last September, that is, September, 1950,

to have the information which the Waybill study has developed and to translate it into some kind of a concrete proposal. But if my friend is suggesting that he had not any notice of that, we perhaps should refer him to the application for the 20% increase filed in July, 1948, in which we forecast that these proposals would be made. Now, I hope that is satisfactory.

MR. FRAWLEY: And that is the first time we asked you to produce it, as I recall it.

COMMISSIONER ANGUS: In that case, I think we have reached the hour for adjournment.

--- At 4:45 the Commission adjourned to meet again on Tuesday, December 6th, 1949, at 10:30 a.m.

A.R.

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
TUESDAY,
DECEMBER 6, 1949.

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - COMMISSIONER

HENRY FORBES ANGUS - COMMISSIONER

- - - -

G.R.Hunter,
Secretary.

P.L.Belcourt,
Asst.Secretary

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M.A.MacPherson, K.C.) Province of Saskatchewan
J.J.Frawley, K.C. H.G.Nolan, K.C.) Province of Alberta
C.W.Brazier) Province of British Columbia
F.D.Smith, K.C.) Province of Nova Scotia; Transportation Commission of the Maritime Board of Trade.
J.Paul Barry) Province of New Brunswick
F.R.Hume M.L.Rapoport) Canadian Automotive Trans- portation Association
R. Kerr) Board of Transport Commissioners
J.O.C.Campbell, K.C.) Province of Prince Edward Island

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OTTAWA, ONTARIO,
TUESDAY, DECEMBER 6, 1949

M O R N I N G S E S S I O N

MR. FRAWLEY: My lord, I now have copies of P.C. 886 of the 5th of June, 1925, which I undertook to file as an exhibit, Exhibit 134.

THE CHAIRMAN: I think we took it in the other day.

MR. FRAWLEY: Yes, it was given a number two or three days ago.

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H. J. DARLING - Recalled. Cross examination by Mr. Evens resumed.

MR. EVANS: Q. Mr. Darling, just before adjournment last evening, I started to ask you a question about something on page 29 of your brief, and perhaps I should put it to you again. On page 29, in that middle paragraph, you were talking about volume discrimination?

A. Yes.

Q. And you speak of it as being a common-place occurrence in merchandising to charge lower prices on goods sold in larger volumes?

A. Yes.

Q. Then, at the conclusion of the paragraph this statement appears:

"Unless a limit is set to the amount of volume discrimination permitted, it would be easy to slip into the position that an entirely different standard of reasonableness in rates applies to heavy movements of traffic than to light or occasional movements."

Now, earlier in our discussion we had reviewed the limits which are now set on volume discrimination, and I do not want to repeat that with you, but I would like you, if you would, to tell me what you have in mind when you refer to the danger that an entirely different standard of reasonableness in rates might follow the failure to set a limit on volume discrimination.

A. Well, what we had in mind there was that if there was to be any equalization of commodity rates, in general, I think it would be found that there is correlation between the lower rate and the larger volume moved, and the limit which we speak of here is that required by our proposal of equalization, which would at least generalize the lower rates because of volume to shippers handling the same type of traffic.

Q. What I really had in mind, was this, that perhaps what you do not quite mean there is a different standard of reasonableness, but if this volume discrimination, as you call it, had no limit upon it, then there might be an entirely different standard of measuring discrimination?

A. Well, I do not mean an explicit standard of reasonableness, but, more or less, in effect -

Q. Well, I was suggesting that perhaps what you mean there - I am only trying to find out what you mean - that you might have meant that you would have applied an entirely different standard of what constituted discrimination.

A. You will have to perhaps elaborate on that.

Q. Well, you say that if this limit is not set then there is danger that an entirely different standard of reasonableness -

A. Yes, it might be considered that merely the existence of the large volume justified of itself a lower rate.

Q. Perhaps that does not mean that it relates then to reasonableness so much as the question of discrimination?

A. Well, it does to the question of reasonableness because it is more than just unjust discrimination. It refers to what we have called regional discrimination as well.

Q. I would like you to tell me just how you think that this question of volume discrimination, if unlimited in the way you propose, would lead to an entirely -

A. Did you say "unlimited in the way we propose"?

Q. Well, you say, unless a limit is set -

A. I thought you said "unlimited in the way we propose".

Q. I am trying to find out, and I think it must be quite clear, I am trying to find out how you think the failure to put the limit you propose on volume discrimination could lead to an entirely different standard of reasonableness in rates.

A. Well, if one contrasted a rate given for a very large plant in one part of the country with that which was accorded a plant in another part, the very fact that there was the difference in volume would mean that that would be a reasonable difference, if the difference in volume were accepted as a reason for the difference in rate.

Q. This different standard of reasonableness, you feel, is a standard different from that which exists today:

A. Well, it may exist to some extent today.

Q. You mean, - you use the word "difference" - you mean, different from something today, or different from what?*

A. The difference between light traffic and between heavy traffic.

Q. Is it a different standard of reasonableness also from the standard applied today that you have in mind?

A. Well, in the sense that if our equalization principle means any changes, I suppose it is different.

Q. If I understood you, it is this: you say that unless your additional or proposed limit is put on volume discrimination that you say is brought about by equalization proposals - that unless that is done, there is danger that an entirely different standard of reasonableness will be applied to heavy movements of traffic than to light or occasional movements.

A. Yes.

Q. Are you saying it will be different than the standard that now applies to heavy movement?

A. It will be different in the sense that today in the cases of regional discrimination there is no common standard recognized.

Q. Are we talking about heavy movement -

A. If there is a heavy movement in one part of the country and a light movement in another, I think under today's plan there would be no valid comparison there.

Q. Then, what you are referring to in the sentence is purely this regional question again, and not generally to the question of volume discrimination as such?

A. No, we are saying that by applying equalization in the manner we have said, it would limit volume discrimination in that way.

Q. You are not interested in the question of volume discrimination as such?

A. We are not trying to prohibit it absolutely -

Q. In this paragraph you are not interested in the question of volume discrimination as such, but you are only interested in the aspect of volume discrimination which involves regional discrimination?

A. I think that is largely so.

Q. Then, at page 31 at the top of the page, this statement appears:

"The small shipper should not be denied the equality of treatment to which he is entitled. If lower commodity rates were given to some shippers solely because of the volume of traffic which they provide the railways, certain undesirable consequences would follow. If the small shipper, whose volume is not sufficient in the railways' opinion to warrant the lower rate, is charged the higher rate, it must be because it is assumed that his traffic can afford to bear the higher rate. It is difficult to avoid the conclusion that if the small shippers' traffic will bear the higher rate, then the large shippers' traffic could bear the same rate equally well."

Now, then, I want to get it quite clear that you are not suggesting, or, at least, it could be inferred, I take it, that you are not suggesting that the so-called volume discrimination about which you are complaining operates selectively against the small shipper because he is a small

shipper.

A. No, of course not. We are not talking about personal discrimination at all. If he is located at the same point as the large shipper, naturally he gets the same rate.

Q. "If lower commodity rates were given to some shippers" -

A. Not located at the same station, of course; there is no suggestion that there is any personal discrimination.

Q. By "some shippers" -

Q. Shippers in some localities.

Q. Big and small?

A. It might be, yes.

Q. Now, coming down to the question of what the traffic will bear, it states here, "If the small shipper, whose volume is not sufficient in the railways' opinion to warrant the lower rate, is charged a higher rate, it must be because it is assumed that his traffic can afford to bear the higher rate." Now, is there in that any suggestion that the distinction is because the shipper is smaller?

A. It is because he is located in another place, and it is partly because - if the reason for the lower rate in point A is because of a large plant being located there, and in point B in some other part of the country a much higher rate exists, I suppose it might be possible to say that it is because the other shipper at the point B is a small shipper that his rate is not the same.

Q. Now, in order that we may understand this: I gather that when you are talking in these terms, and illustration of the case yesterday is probably what is in your mind, and that was that in-bound to the distributing point in the west,

there was no application as such of the distributing class rates, and that when the volume of traffic warranted it, the in-bound rate at the class rate scale was published as a commodity rate; is that the kind of example?

A. Well, not particularly, but that might serve.

(Page 11494 follows)

Q. Now then, would this be a fair way to put the situation, that when we are talking about volume in that aspect, we are talking about the collective volume of all the shippers in a given area or community?

A. Yes.

Q. And the collective volume might just as easily be the collective volume of a number of small shippers as one or two or three big shippers?

A. That is why we say there should be no opposition to the equalization of commodity rates because of volume.

Q. Then I take it "That is because" that you are assenting to the question?

A. Perhaps I had better have the question again.

(Reporter reads back previous question)

A. (Con.) That is true, yes.

Q. Now then, will you turn to page 32 -

COMMISSIONER ANGUS: Just before we leave that point, is this in any way related to the question that we have had elsewhere of lower rates for specially heavily loaded cars? Some people ask that that principle should be extended and that the rates should always be lower in that case. Are you saying that to give specially low rates for specially heavily loaded cars is a little unfair to the small shipper?

A. Not in all cases, sir. At the bottom paragraph on page 32 we point out that on certain commodities the minimum scale of operations is such that no shipper, if he is a shipper in any business at all, can fail to make a larger volume, and that is really more or less a legitimate device to buy manufactured goods.

MR. FRAWLEY: The next sentence.

A. Yes - "On general merchandise and manufactured articles, the varying carload minimum might involve an unreasonable advantage where there is a difference in the

scale of the production".

THE CHAIRMAN: Tell me this, Mr. Darling. At page 31 you have modified the position or at least you had clearly pointed out that you are referring to localities, not to individual shippers?

A. No, we are not talking about personal discrimination at all.

Q. Can you tell me - I was not here yesterday afternoon and may have missed something - can you give me any instance of the particular wrong that exists that you have in mind when you lay down your principle here about volume, I mean apart from this distribution?

A. I cannot think of a particular instance but I can easily give an example.

Q. You do not know of any particular instance existing now?

A. I do know of one or two.

Q. Well, give me one?

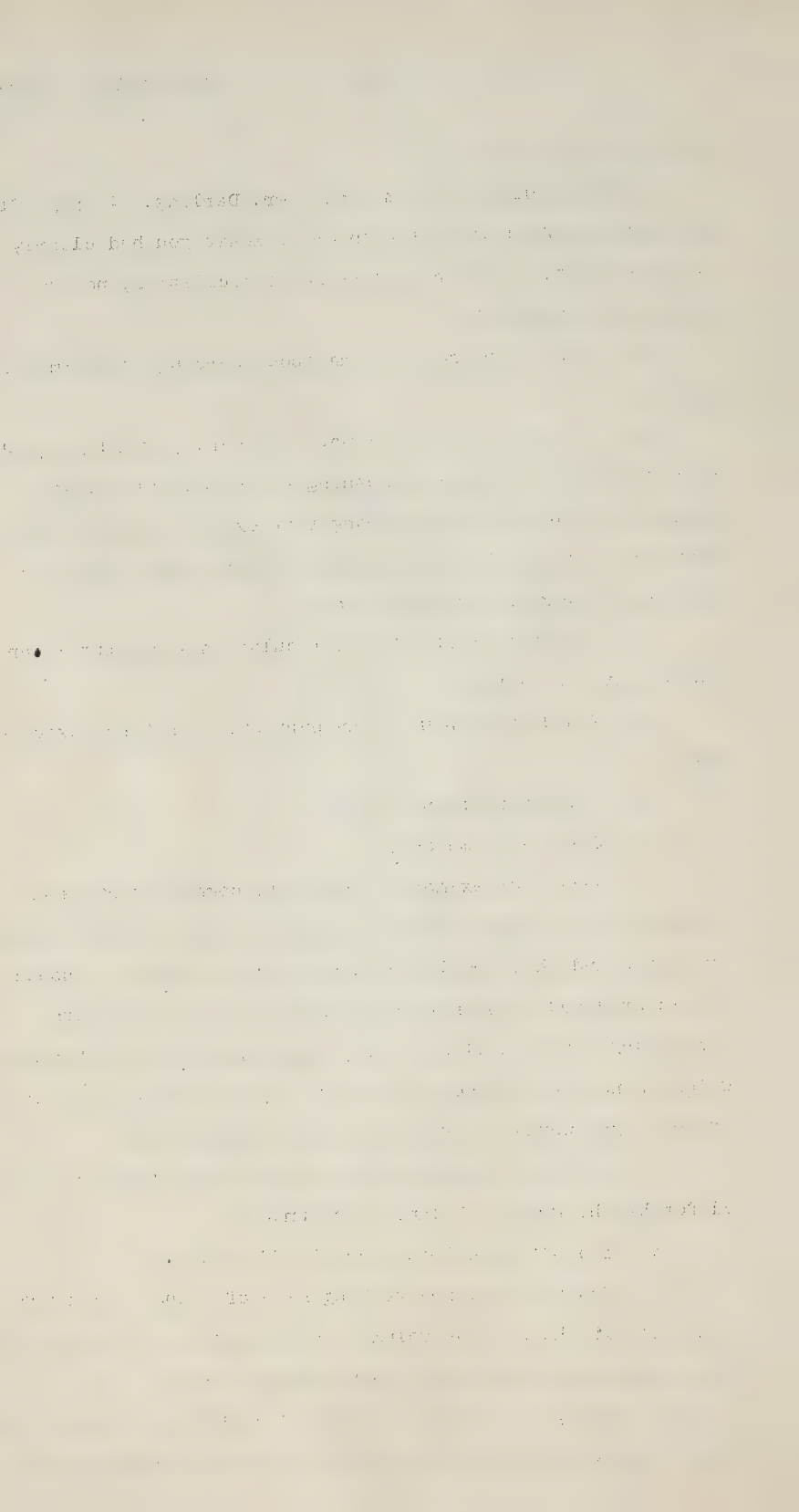
A. Well, for example there are commodity rates on linseed oil published in Eastern Canada which are not competitive rates and they are lower than the class rates. Linseed oil is produced in Saskatoon and Medicine Hat in Western Canada and moves on class rates. Now, there is a difference which is not due to competition but I would presume that rates of that type would be affected by our equalization.

Q. And you think the lower rates in the East are accounted for by the greater volume of shipments?

A. I don't know what accounts for them.

Q. You see, you are talking here of volume. You are pointing out the evil of volume, the danger of greater volume receiving better treatment than lighter volume?

A. Well, I have not an explicit example of that but we might easily point out that in the case of an industry which



is well established in the East they might have a very thorough-going system of commodity rates and that if a similar industry were to start up on a very small scale in Western Canada it might not (of course, I am not saying this is the case but it is what we wish to prevent) it might be given an entirely different scale of rates.

Q. Well, you do not want such a thing to happen then. You are talking of the future?

A. That is right.

Q. I thought you had something in mind that is going on now?

A. No, I don't know of any flagrant cases of that.

Q. But there does remain this; you have given me now another case of inequality on these linseed oil shipments from the East and in the West. That is an inequality?

A. Yes, not accounted for as we say there by any other differences that we would recognize.

MR. EVANS: But if that particular difference which you mentioned to the Chairman a moment ago were due to that question of market competition existing in the east which the railways were attempting to assist the Eastern producer in meeting, then I gather you would consider that to be a proper exception to the equalization principle?

A. If they were published as market competition rates which these ones I am speaking of were not.

Q. They were not?

A. They were not market competition; that is all I know.

Q. But the fact might just be that the necessity of those rates might have developed out of a market competition situation without the rate differences having been published as a market competition rate?

A. If that were the case I think it should be published as such.

Q. That is your view?

A. Yes.

Q. Now then, I was going to come rather surprisingly, I think you will agree, to a point where I almost agree with you.

A. Better put that in red ink in the transcript.

Q. Don't press it too hard. At page 32 where you express some opposition to lower rates for larger carload minima, before I ask you a few questions about that I would like you to know that in principle the Canadian Pacific would be opposed to a widespread use of different carload minima. Now then, with that as a beginning I ask you this; would you agree that in the case, for example, of trans-continental competitive rate that the necessity for a larger carload minima to get the lower rate might be justified on the ground of meeting water competition where large cargoes of these materials are carried?

A. Well, if competition is involved that removes it from the problem we are discussing here.

Q. I just want to get this thing straight. Now then, I gather that you feel that the carload minima should have in mind that all shippers big and small should have a reasonable chance of using the carload rate?

A. In general, yes.

Q. Now then, would you bear in mind not only the ability of the shipper to fill a carload, but would you also have some weight given to the efficient use of equipment?

A. I believe that would be achieved through the fixing of the minimum carload.

Q. Yes, but the fixing of the minimum carload differs according to weight per cubic foot and volume of the particular

commodity?

A. That is right.

Q. Now then, would you attune your mind - let us assume you got your desirable minimum carload which would make it possible for the small as well as the big shippers to use it, would that principle over-ride the principle that the car should be filled as nearly to capacity as might be in order to get the carload rate?

A. I think it would excepting in times of emergency as during war time.

Q. Now, that might well mean a pretty general lowering of carload minima in the country today, mightn't it?

A. I do not regard that as a possibility.

Q. You do not regard it as a possibility?

A. Excepting those particular commodity rates which are now for varying carload minima. Some of those perhaps might be removed.

Q. Now, I just wanted to get your view. Are you advocating a revision of those carload minima so as to give effect to your principle or are you merely suggesting that they should be carried in future and not have a multiplicity of minima on the same commodity with different rates?

A. I think that is what we would like the Board to investigate whenever these rates come up.

THE CHAIRMAN: You mean the Board?

A. Yes sir.

MR. EVANS: So you are not asking this Commission to do anything about that?

A. Not explicitly - no, but we are putting forward the principle.

Q. Now, have you considered the position of Louis Petrie Limited which is an Alberta concern located, I think, at Calgary and Gainers Limited, also an Alberta producer?

Have you reconciled the position you take on varying carload minima with the position they took before this Commission?

A. You would have to refresh my mind on their position.

Q. Well, they were for varying carload minima at different rates.

A. Well, if their request was in line with our proposition, I think that would be -

Q. You have not considered, as a representative of Alberta, this question whether their representations were or were not in accordance with your principles?

A. As I recall their submissions, they were comparing their rates with competitive rates, weren't they, in having too high carload minima.

Q. There might have been some such.

A. And they were questioning the validity of the competition and assuming that the rates were not reflecting the competition, I believe they thought they should be given the same privilege.

Q. In order to clear this up, I suppose it could be said that to the extent that the request was based on competition?

A. Or a lack of it.

Q. We would fully agree that they might have something to be said but to the extent that it was merely a request for additional carload minima to get a lower rate?

A. I did not understand it as such.

Q. You do not?

A. I did not understand it as such.

Q. Well was it not this, that in some cases they were complaining about the high carload minima in the trans-continental rates and they wanted to get the benefit of a somewhat similar lowering of rates for themselves?

A. That is true but that is really more or less in line with what we are ourselves advocating, the extension of those carload minima to all shippers.

Q. Now, that helps me to get where you really want to go. I understand your position to be this, that a railroad is entitled, when meeting competition, to have different carload minima where the competition might require it but not to the extent you previously did say?

MR. FRAWLEY: First of all, does the witness agree with that?

MR. EVANS: He has already agreed with it.

A. That depends on the competitive conditions in the circumstances.

Q. I agree. I think that was clear before but I did not understand you to say before that if they did that to meet the competition they must extend it to other shippers whether the competition is involved or not?

A. It depends if there is any discrimination created by the competitive rate also.

(Page 11506 follows)

Q. Then we get down to this, that only to the extent that discrimination is to be met do you say that these otherwise competitive carload minima should be applied to other shippers?

A. Provided they first can be justified in themselves.

Q. By the competition?

A. By the circumstances of the competition.

Q. We are right back to where we started from, I guess; however, let us pass on. One further question on this carload minimum: Would you not agree that the loading of cars to the maximum permissible extent is in the interest of the economy of service to the public generally, as a principle?

A. It is one factor, but not an overriding one.

Q. Well, I did not ask you whether it was overriding; I asked you whether it was not a matter of interest to the public as a whole, in the interest of economy?

A. It is a matter of interest, but it might not always be a matter that would be desirable to pay attention to at the expense of other factors.

Q. Then, quite apart from the weight that should be given to it, would you say Yes or No to this proposition: Do you agree that it is desirable to use freight cars as far as possible to their maximum capacity?

A. I would give a general assent to that, yes.

Q. Now, at page 33 and going over to page 34, you are dealing there with competition and the rate structure. Near the top of page 34, after you have reviewed the eastern class rates, the history of the eastern class rates, you make this statement:

"It is therefore difficult to discover the basis for the claim that Eastern standard class rates have been

depressed because of competition."

Now, I gather that that view you know to be directly in conflict with an express finding of the Board of Transport Commissioners?

A. We quote the statement to which I believe you are referring on page 37.

Q. Yes. Then the answer to my question is Yes?

A. Yes; we do not see the grounds on which that statement was made.

Q. Now, may I suggest this to you: the early history of the Great Lakes discloses that there was a very substantial commerce by water on the lakes before there was any railway in that part of the country; is that not true?

A. I think that is probably true, yes.

Q. So that it is probably true that at the moment the first railroad went into operation there, there was already established on the lakes a substantial transport industry?

A. Well, I suppose that is the only way commodities moved in those times.

Q. I agree with you, I agree with you.

MR FRAWLEY: Canoes.

MR EVANS: No, not canoes, Mr. Frawley. They may have canoes in Alberta, but they had ships, large ships, on the lakes. They even had naval battles on the lakes.

Q. Now, what I am putting to you is this: When the railways went in they had already before them the competition of ships on the lakes, and I am suggesting to you that the first rate scale that was established very probably reflected the conditions they then met when the railroads were first built and went into operation?

A. That may have influenced the initial scale of

rates, but by no means all of the rates could be construed as water competitive. In most cases the railways had a substantial advantage over the existing water transport.

Q. I suppose you mean the advantage of speed?

A. Speed, yes; apart from bulk -- in bulk commodities, where water competition is still active.

Q. What you say here is, it is difficult to discover the basis for the claim that the eastern standard class rates have been depressed because of competition, and I am suggesting to you that from the very moment the first standard class rate was put into effect that competition was already in existence and was all-pervasive in that area?

A. I do not believe that it was reflected in the standard class rates, for those were the maximum rates which the railways were required to file with whatever the Government Department was at that time, and the bulk of their traffic, as is apparently clear from Professor McLean's report, moved at lower rates than that.

Q. Now, you say you hold that belief despite the fact that the Board has on several occasions given its opinion to the contrary?

A. I find it difficult to see the basis of their statement, when it is stated in Professor McLean's report that the maximum rates were set higher than average in order that the railroads would have sufficient leeway underneath that to fix their rates, and even in 1903 it was stated that they were not moving any volume of traffic.

Q. We are not talking about 1803, we are talking about the building of the first railway.

A. 1903.

Q. 1903, yes. We are talking about the time the first railway was built. You merely have a contrary opinion to the Board in that respect, and you do not recognize the probability or the possibility that the fact of the commerce on the lakes being there would have influenced even the maximum rates that were put into effect; am I right?

A. I think that the traffic on the lakes would be more influenced by the commodity rates and lower class rates which were published.

Q. Do you prefer not to answer the question? Shall I pass on?

A. What was the question again?

MR EVANS: Would the reporter please read it?

THE REPORTER: "You merely have a contrary opinion to the Board in that respect, and you do not recognize the probability or the possibility that the fact of the commerce on the lakes being there would have influenced even the maximum rates that were put into effect; am I right?"

THE WITNESS: There are two questions there. To the first one I would say Yes, and to the other one No. Yes, we have a contrary opinion to the Board; and no, we do not believe that---

MR EVANS: Q. You would not recognize the probability or the possibility of that?

MR FRAWLEY: What the witness says in the brief is:

"it is difficult to discover the basis for the claim that Eastern standard class rates have been depressed" -- depressed -- "because of competition."

MR EVANS: I am cross-examining, and I want an answer to the question.

MR FRAWLEY: You used the word "influenced", not "depressed"; we say "depressed", that is all. I think you want to be fair about it with the witness.

MR EVANS: Mr. Frawley, I am cross-examining on the very statement you are reading. I do not know what the purpose is, whether to remind the witness that he has a different view from the brief, or what.

MR FRAWLEY: No; we seem to have lost sight of the word "depressed".

MR EVANS: I am cross-examining him. I want to see how far he goes.

Q. You answer the first part of the question Yes, and the second part No, and I think we are clear that your Yes refers to the fact that you disagree with the Board, and the No refers to the second part of the question, which was as to whether there was no possibility or probability that the standard class rates in the east were influenced by ^{the} water competition they found in the original instance?

A. Well, as to the second question, I would not like to go so far as to say there was no probability of them being that; I think that the probability is otherwise, but I do not exclude the possibility.

Q. Now, on page 38 in the last paragraph reference is made to the canal system, and you concede in these words something about the canal system and its benefit to the west:

"It is true that Western Canada derives benefit from the canal system in the carriage of grain, but the extent of this benefit should not be exaggerated."
I was going to suggest to you that western Canada also benefits in respect of other commodities from that canal system?

A. Where there are commodity rates, possibly.

Q. Well, the traffic handled by ships moving up and down the lakes to Fort William does move beyond Fort William, does it not, by rail?

A. Yes, that is right.

Q. And, taking it as a movement by ship, western Canada gets the benefit of the lower rates charged by the steamship companies on those movements?

A. That might apply to the eastern part of the prairie provinces, but on the class rates, as we showed, the benefit to Alberta there was more problematical.

Q. I suppose you are talking about this assumed mileage, are you?

A. I am talking about the construction of the rates. Anything that moves on class rates to the west pays a higher rate than if it were moving on a single factor rate. We went into all that before. Now, if that is moved by water there is a differential underneath the all-rail rate, and much less than the differences which we showed there between the through rates.

Q. Well, are you prepared from any study that you have made to say here that the west, including Alberta, gets no benefit from the movement of other commodities than grain on the lakes?

A. Oh, I would not make that absolute, no.

Q. Well, how far would you go in making it absolute?

A. I would say they do not get any benefit in Alberta as far as the class rate traffic is concerned.

THE CHAIRMAN: Q. As far as what?

A. As the class rate traffic is concerned.

MR EVANS: Q. Have you any idea what preponderates class traffic or traffic on commodity rates?

A. Coming into Alberta it is largely class traffic.

Q. It is largely class traffic?

A. Yes.

Q. Now, at page 40, at the bottom of the page, you have been dealing with the control needed in the case of competitive rates, and in the last paragraph you speak of "the nature of competition in transportation making it obvious that the control of competitive rates cannot be achieved by arbitrary methods. Administrative rules and procedures must remain subject to adaptation or modification, at the discretion of the regulatory authority." Now, you would agree, would you not, that among the matters which are involved in Alberta's case with regard to competitive rates, are these questions as to the extent to which competitive rates shall be applicable to the intermediate points? I am not going into these in detail, but just on this general question covered by this paragraph.

A. Yes, that is right.

Q. Now, to get the air a little clearer, I think you will agree that under the Act as it now stands the Board has the power, or shall we say the discretion, to apply or not to apply a competitive rate to the intermediate point whether there is competition or not at the intermediate point?

A. They have the power, I would say, yes.

Q. In other words, they have the power if they deem it expedient to do so?

A. I suppose it amounts to that, yes.

THE CHAIRMAN: Have they ever done it, Mr. Evans?

MR EVANS: I think they have; I think they have, but I could not put my finger on a case at the moment.

MR FRAWLEY: I was wondering, Mr. Evans, just to be clear, did you say that they could deem it expedient

whether or not there is competition? The section says, "unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

MR EVANS: That implies that if they deem it expedient to do so they may apply the competitive rate to the intermediate point, even though there is no competition at the intermediate point.

THE CHAIRMAN: What section are you reading from?

MR EVANS: Subsection 5 of section 314.

THE CHAIRMAN: What is your inference from this subsection, Mr. Evans? What inference are you drawing from this subsection 5?

MR EVANS: My inference is simply that the Board could, under that section, if it chose to do so, apply a competitive rate to the intermediate point, even though competition did not exist at the intermediate point. You see, this is the long and short haul clause, and the general rule is that the Board is not to approve or allow any toll which is greater for a short haul than for a longer distance, in which the shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll.

THE CHAIRMAN: Supposing the Board is not satisfied of the competition, and disallows the toll?

MR EVANS: That is clearly their power.

THE CHAIRMAN: Then do they go on and fix another toll?

MR EVANS: They have done, yes.

THE CHAIRMAN: They have done?

MR EVANS: Yes; but my point here is a little different, sir. I do not want to leave it until I am quite clear on it. I am saying here that the Board could find that competition would justify a lower rate for the

longer distance.

THE CHAIRMAN: In that case they would not interfere.

MR EVANS: This word "expedient" gives them the power or the discretion; even though they find that it would be justified by competition, they could still say as a matter of discretion that the long and short haul rule or clause should apply.

THE CHAIRMAN: No, but the word "expedient" comes into play only if there is competition.

MR EVANS: Yes, sir.

THE CHAIRMAN: "Unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

Well, if there is an absence of competition it cannot be expedient.

MR EVANS: Well, of course, we are speaking now of different things, sir.

THE CHAIRMAN: No, I am just trying to find the real meaning and the force of this subsection 5. It seems to me it is a negative one.

MR EVANS: It is a negative one, quite so.

THE CHAIRMAN: That the Board shall not approve or allow any such toll as you have described unless it is satisfied that it is expedient to allow it, owing to competition.

MR EVANS: Yes.

THE CHAIRMAN: Well, if the Board finds that the competition does not exist, and therefore it is not expedient to allow it, what does the Board do then? Does it simply disallow that toll, or does it go on and fix another?

MR EVANS: It would disallow it, and it might or

might not fix another. But may I go back to the point upon which I think perhaps you and I are at cross purposes. I put this to you: The Board might say there is competition, but they might say it is not expedient to allow this competition to influence a departure from that rule. That is what I mean. It is expedient, owing to competition. I think they might say that, even though the competition is there, it is not expedient.

THE CHAIRMAN: Oh, yes, they might do that.

MR EVANS: That is the only point I was making.

THE CHAIRMAN: They might think that the competition is not strong enough, is not important enough, to justify this particular toll.

MR EVANS: There might be that.

THE CHAIRMAN: They might say there is the competition all right, but not enough competition, nor not the kind of competition to allow a toll so low as this, and they would disallow it.

MR EVANS: Yes.

THE CHAIRMAN: It seems to me that is what it is.

MR EVANS: The only point I wanted to make was, there was some discretion; it is not---

THE CHAIRMAN: I thought you began by saying that they could extend the toll.

MR EVANS: They could.

THE CHAIRMAN: Out into territory where there is no competition.

MR EVANS: They could -- not out into territory, but they could make the railway, as a condition to approving the competitive toll that might be attacked, extend that competitive rate to the intermediate point, if they thought it expedient to do so.

THE CHAIRMAN: If the railway did not agree,

what would happen?

MR EVANS: Then, if the railway did not agree, the Board would disallow the entire competitive rate, probably.

COMMISSIONER ANGUS: Perhaps you have answered my question, but it was really this: If the Board would be satisfied that the two conditions exist, (1) competition and (2) expediency, and it decides that it is inexpedient to allow such a toll, the toll that it disallows is then the toll for the longer distance.

MR EVANS: That is right.

COMMISSIONER ANGUS: But has it the right to say, "We will allow that lower toll for the longer distance, but also reduce the rate for the shorter one"?

MR EVANS: I think it might. I think it might say to the railway, "We are going to do one of two things; we are going to disallow that, or you are going to apply it to the intermediate point and that in effect forces the railway, if it wants to put in the competitive rate, to make it apply to the intermediate point as a maximum.

COMMISSIONER ANGUS: It does leave at least a nominal choice to the railway.

MR EVANS: Oh, yes, it does. My point to the witness is merely that there is a discretion there, under the present law, which enables the Board to deal with these matters.

Q. Now, the next thing that there is a discretion about, and that there is also a principle about: Will you agree with me that if a competitive rate is put in between A and B, and C is the intermediate point, and the competition exists at C, the Board would find the failure to give the competitive rate to C is unjust

discrimination?

A. I think that would be so.

(Page 11520 follows)

MR. EVANS: Now, then, the Board might be interested in an actual case of that kind to see how it works, and I have a reference here to the Halifax Fisheries Case. That has several aspects of interest, but the one we are involved in at the moment is this question of competition at the intermediate point.

The Case is reported in 56 Canadian Railway and Transport Cases. There are two judgments in the same volume. The first of them is reported at page 78, and the second, at page 134. On this point, the first judgment is the more important, because the second judgment was after the re-hearing on the question as to the effect of the wartime Prices regulations on the removal of discrimination, and that is not the point I am making, but in the first judgment it will be found that complaint arose out of water competition, which was said to be applicable to the intermediate point, Halifax. Halifax was intermediate to Malagash and Lunenburg, and there was the competitive rate in effect between Lunenburg and Malagash on salt, 8 cents per hundred pounds, to meet water competition, and the rate between Malagash and Halifax, was 10 cents. It was established that there was similar water competition with Halifax, and the Board in both judgments were unanimous in one thing, that was that there was unjust discrimination that had to be removed by the application of a lower rate to Halifax.

Q. Now then, when we are speaking also of competitive rates on page 41, you follow a quotation there in this way; you say: "In general, only where 'unjust discrimination' results does the Board feel called upon to intervene in matters concerning competitive rates." Now then, I am not sure whether that involves some complaint about the legislation

or about the way the Board interprets its powers, but would you agree that the Board clearly has the right to consider the reasonableness of the competitive rate, whether or not there is any question of discrimination?

A. That is included along with a thousand other things in the general language of the Act.

Q. Well, section 325, to be specific?

A. Yes.

Q. There is no limitation on the powers of the Board under that section to any special type of rate, is there?

A. No, I do not believe so.

Q. So, I think you would agree with me that so far as reasonableness is concerned, that the Board could intervene. Now, that of course, in the case of competitive rates, would probably be where the rate was unreasonably low, would it not? It is not likely to be unreasonably high if it is a competitive rate?

A. No, it would likely be unreasonably low.

Q. Or it might be where the rate was unreasonable having regard to the exigencies of competition.

A. Well, as I read the Board's decisions, the Board has not taken any position on the levels of the reasonableness of competitive rates provided they are not flagrantly non-compensatory .

Q. You say "In general, only where 'unjust discrimination' results does the Board feel called upon to intervene in matters concerning competitive rates". You do not wish to have it inferred from that that the Board has simply ignored these other things, do you?

A. They have generally disclaimed that it was a matter for their supervision.

Q. You think they have disclaimed that it was a matter of interest to them?

A. Well, in the quotation just above there - "The railway company's untrammelled right to meet or disregard competition is subject to this qualification", and it refers there to a condition of unjust discrimination.

Q. Well, we have agreed on that, that the railways' ^{is} right/untrammelled to meet the competition. I thought we had agreed that the Board could prevent us making an unreasonably low rate.

A. Under the Act, they could, but in practice I believe they have said it is a matter for the railways to decide, the extent to which it will meet competition.

Q. I think we are in perfect agreement, that the Board has said that it is a matter for the railways to say the extent to which they will fix the competition.

A. It means in practice that they will fix the rate.

Q. But has the Board ever said that right extends to an unreasonably low rate?

A. No, I do not believe they have said that.

THE CHAIRMAN: Doesn't the next paragraph give a case where the contrary was held, "the Board disallowed a new rate on the ground that it was lower than competitively necessary"?

MR. EVANS: Yes, that is another aspect. I am just trying to get some of the powers that the Board has now under the present law.

THE CHAIRMAN: Well, we have the case of "competitively unnecessary". Is there any case where a rate was disallowed because the Board held it was non-compensatory?

MR. EVANS: I do not recall any, but they have unquestionably got the power.

THE CHAIRMAN: How would they find out that the rate is non-compensatory?

MR. EVANS: Well, we have had complaints made here on a number of occasions that we have what are called give-away rates.

THE CHAIRMAN: Yes, but has the Board ever found that a given rate was non-compensatory?

MR. EVANS: To my knowledge, I could not say that.

THE CHAIRMAN: All right,

MR. EVANS: Q. Now then -

MR. FRAWLEY: Perhaps I should call attention to something that appears in a recent judgment in what is known now as the 21 Percent Case, At pages 51 and 52 the Board runs over the cases dealing with competitive rates, and they conclude with this passage from the Case of Eastern Canada Preserved Foods Association, Winona, Ontario v. Canadian Freight Association (1928) 35 C.R.C., 179:

"The matter therefore presents itself as an application to compel continuance of a competitive rate, and on this point the Board is on record in many decisions. It has frequently expressed the view, that, subject to the provisions of the Act regarding discrimination, it is within the discretion of the railway companies to meet water competition, but that the railway companies are not to be compelled to put in or maintain rates to meet such water competition."

MR. EVANS: There can be no possible dispute about that, but -

THE CHAIRMAN: From what Mr. Frawley has said, Mr. Frawley assumes that the Board is getting the whole case, that "unnecessarily low for competitive reasons" is something that the railways cannot do, but no case is made

that the Board may interfere with a rate on the ground that it is non-compensatory?

MR. FRAWLEY: No, but they say, "so long as you do not offend against discrimination, you can do what you like".

MR. EVANS: Well, that is not possible, because any one could establish under Section 325 the right to come in and have a rate disallowed because it was non-compensatory.

Q. I just want to review with you the three classes of problems that you have presented, beginning on page 41 and continuing to page 42. These problems are problems arising from the competitive rate situation. Now, I think in our discussions at the moment, and in your reference to the Colonial Steamship Case, that you would have agreed with the first problem, which is whether the competitive rates are at an unnecessarily low level having regard to the competition, that there is already adequate power under the present law for the Board to deal with it.

A. The inadequacy may be in the lack of explicitness of the act - yes, it is certainly there in general.

Q. We come to the second problem, that in some cases the Board has established rates reflecting ^{competitive} conditions existing at the date of its judgment, and in other cases competitive rates have been made by the carriers themselves, and in both cases the rates in the course of time may have come to be regarded as normal rates for the traffic concerned, and you say that competitive rates having this status should be recognized as normal rates. Now then, I think that we would agree that if, in fact, they had become normal rates, that on the various standards of reasonableness which the Board has full discretion to apply, the Board could do that under its present powers.

A. Yes, it could.

Q. Then, "A third class of problem involving competitive rates is the one which concerns the relationship of competitive rates to the rest of the rate structure", and you give as an example the compensatory nature of a specific competitive rate, and I think you will agree with me that so far as the Board's present powers are concerned, they also have the power to disallow a rate that is non-compensatory.

A. One could deduce that power from the wording of the Act.

COMMISSIONER ANGUS: What do you mean by the words "or on the position of the competing agency", at line 6?

A. Well, the rate might be so low as to give rise to the thought that it was for the purpose of eliminating competition rather than merely attempting to win a share of it.

Q. You mean, that it might be so low that it was unfair to the trucks?

A. Well, I think that would be a consideration, actually. I do not think the Board is to consider itself the agent of the railways in furthering their particular interests exclusively. They have to serve a public function.

Q. But if it is within the discretion of the railways to meet competition, should it be one of the functions of the Board to protect the competing agency against discretion?

A. Well, not protect them but perhaps in extreme cases, draw a line.

Q. Could you give me an example?

A. Well, on the rates between eastern Canada and the Pacific coast, the rates can be maintained at such a level as to discourage any use of the water transport.

Q. You mean, it is the duty of the Board to see that ocean transport is protected against unfair competition by the railways?

A. Only in the extreme case. They are not in any sense arbitrating between the respective interests. I do not think that is their responsibility. I think that would be a case of a rate being lower than necessary to meet the competition.

THE CHAIRMAN: What does the word "meet" mean? Do you mean you will eliminate it, or just share with it?

MR. EVANS: Well, I am not an expert on this, but I would suggest that the word "meet" would indicate that you put yourselves in a position to meet it on equal terms.

THE CHAIRMAN: That is, to give the shipper his choice between two equally beneficent carriers?

MR. EVANS: Well, I do not know that I would go that far. I would want a little more latitude than that. You would be meeting the competition in case A by having complete equality of rates, and then you might be meeting the competition by, for example, as in the case of pick-up-and-delivery rates, if you simply added pick-up-and-delivery servicing to your ordinary tariffs; you might be meeting competition by having a differential over or under the competing agency having regard for the differences in the kind of services provided; in other words, you might refrain from giving the pick-up-and-delivery service to make a differential under the truckers' rate in order to give the shipper a choice whether he would pay in it for the pick-up-and-delivery service of the truck, or to forgo that for the railway service without it. There are several ways that you could meet competition. I do not think it always means an identity of rates as such.

THE CHAIRMAN: You see, it is important because it is one of the rules given by the Canadian Pacific Railway, for instance, for the justification of these competitive rates that it must not be lower than is necessary to meet the competition. That is your own rule?

MR. EVANS: Yes.

THE CHAIRMAN: And I have often wondered and now I am asking you, what do you mean by "meet the competition"? You have given me some instances but do you feel that you think you do if you take half the traffic, say, and the competitor gets the other half? Do you consider that meeting competition?

MR. EVANS: We might think that it would not be open to go out to get that other half because we might have to go too low to get it.

THE CHAIRMAN: Then you come in conflict with the other part of the rule that your rate must be compensatory?
MR. EVANS: Yes, It seems to me that you have to weigh these

things and I think I cannot illustrate it better than by saying this, and this came up in the discussions when the Automotive Transportation Association was on, as I recall it. If there is any economic sphere for the truck, for example, it is probably in the lower mileages somewhere. I do not delimit it; I do not say 50 or 75 but it is in the lower mileages. Now, if there is an economic sphere for the railways it is probably in the very high mileages and between those two spheres there is what we might call the "twilight zone" or the competitive zone where each is a competitor to the other within the economic range of its operation. Now, there, competition will be felt and will influence the service and the rates of the competitors. Now then, the extent to which it is either necessary or

desirable to meet that competition within the range is up to the railways as long as they do not have rates that are not compensatory or rates that the competition does not require.

THE CHAIRMAN: Rates that are what?

MR. EVANS: That the competition does not require.

THE CHAIRMAN: Lower than necessary to meet the competition, and you are back again face to face with the word "meet".

MR. EVANS: Well, I suppose it makes a prima facie case by showing that the rates were no lower than the rates charged by the trucker now and if that were so you would have a rate no lower than necessary to meet competition.

THE CHAIRMAN: After all those three areas you have given me that competitive area is really the middle one. Take in a large city like Montreal and Toronto, the truck has the business; there is no competition there at all?

MR. EVANS: No.

THE CHAIRMAN: And on the very long route again you have the business?

MR. EVANS: Yes.

THE CHAIRMAN: So it is only in that middle area that there is really competition?

MR. EVANS: Yes.

THE CHAIRMAN: Now, I am still trying to find out - perhaps it will be made clearer later - but is the object of the railways to eliminate that competition so far as they can do so without granting a rate which is non-compensatory?

MR. EVANS: Well, I think the answer must be yes to the extent that one would get all the traffic if they could get it but they may not set a rate that is designed to eliminate in the sense of being destructive. That is the distinction I make from what your lordship says. I do not want to create the impression that we would fix a rate deliberately intending to destroy our competitor with the idea of coming back up after

the competitor were destroyed. You will probably see what I mean when you consider the Panama Canal competition. Now, there has been a little tendency to look upon these rather infrequent movements via the Panama Canal as something indicating that the competition is not there, but the position might be very different if the transcontinental rates were raised to a sufficiently high level to promote it.

THE CHAIRMAN: Well, what is it? Might it be said that there is a possibility of the railways putting their rates down so low that shipping will be discouraged and not go around that way?

MR. EVANS: I think that is perfectly true.

THE CHAIRMAN: Well then, is it a desirable state of affairs?

MR. EVANS: We would think so. As long as there is a free play of competitive forces unaccompanied by non-compensatory rates I suggest to you, sir, that that is desirable.

THE CHAIRMAN: That is your attitude?

MR. EVANS: Yes.

COMMISSIONER INNIS: You would prefer to discourage rather than to destroy the competition? It would be to your interest to discourage rather than destroy?

MR. EVANS: I think you put it better than I.

COMMISSIONER ANGUS: If we might turn for one moment to those words "or on the position of the competing agency ..". Do those suggest that a competing agency can go to the Board and say "Here is a railway rate which, as far as the railway is concerned, is compensatory. As far as the railway's revenue position is concerned it is giving the railway the maximum revenue. We admit those two things but the rate is unfair to us because it is destroying our business". Is that something you are contemplating when you use these words?

THE WITNESS: Well, I think the Board would have to perhaps

consider the rates and approach the problem in the other way in taking the rail rates but I do not know that we have considered the right of the competing shipper to complain of discrimination of that type.

Q. Do you say they should or should not?

A. Well, this did not necessarily imply that there would be a complaint lodged with the Board by a competing agency.

THE CHAIRMAN: Well, how would the Board know that this rate is unduly low because of its effect upon the position of the competing agency? It seems to me that would mean some inquiry into the competing agency's rates, would it not?

A. I presume it would sir, on that basis. You would have to have a complaint either from an area -

Q. But the competing agency is beyond the range of the Board's jurisdiction?

A. That is true. I think they would have the right, sir -

Q. If it involves, for instance, another railway, then the matter would be simple because the Board has jurisdiction over the whole subject matter but it may simply be one of the difficulties of our system of government. The Board cannot have any jurisdiction over traffic on highways in the provinces?

A. I think the competing agency should always lodge its complaint on the reasonableness of the rate.

Q. Do you think it advisable that that might be done, that a competing agency could complain and come before the Board as a person affected by the rates fixed by the railways?

A. I believe they could do so now, sir. There is nothing to prevent them.

Q. Do you think they ought to be empowered to do so?

A. Well, I don't know that we have made any specific suggestions.

Q. Well, I am asking you?

A. I think the Board should be able to consider that, yes sir.

Q. You think the Board should be able to consider that?

A. Yes sir.

--- Recess

MR. EVANS: Now then, at page 43 at the top of the page carrying over from the bottom of the previous page, you speak of the need for a continuous supervision of all competitive rates and then "The Board must be in the closest touch with all developments" and so on "The extent of actual competition, the relationship between competitive and non-competitive rate levels, the compensatory nature of competitive rates, the extent to which competitive rates reflect current competitive conditions, the volume of traffic carried on competitive rates in different regions and its proportion to total traffic, and all other matters relating to competitive conditions". Now then, I do not intend to take each of those in turn but, for example, one of the things is the importance of traffic carried on competitive rates. That should be something which the Board at all times knows in your view. Am I right?

A. Yes.

Q. Now then, do you agree that it would be impossible for the Board to do that without making a waybill study?

A. No, I believe that is the way you would find it out.

Q. So that one of the things that is involved in this suggestion of the continuous review of competitive rates would be more or less a continuous waybill study?

A. Yes, I think we would like to see that.

Q. Now then, have you any experience of the difficulty of making such a waybill study?

A. I never made one myself, if that is what you mean.

Q. Have you any idea of the difficulty involved?

A. There may be some complications; I don't think they are insuperable though.

Q. I suppose nothing is impossible but I am suggesting this to you, that in order to know how much traffic is moving at competitive rates, you would have to look over all the waybills and then arrive at all the traffic that is moving.

A. I think you would use a sampling technique like you do in all waybill studies.

Q. Oh quite, I would not suggest you take all waybills every day. I am talking about the method used by the Board in the waybill study they are now making. I suggest to you that that has taken the Board and the railways nearly or will have taken nearly two years to complete for one set of test days. Now, in view of that, is it your view that this should be a continuous process?

A. Well, I would not think, bearing in mind that this is the first time in which such a study has been attempted, and with an entirely new staff, and with the time required to explain to the railway personnel affected just what was required, that that would be a typical estimate of the amount of work involved.

Q. May I put it this way; it would be typical in the sense that either you would have to take that amount of time or you would have to have a larger staff to cut down time?

A. I think they would become more efficient at that type of work.

Q. Do you know when the waybills are studied that the first processing involves determining what tariff the particular rate shown on the waybill was derived from?

A. That may be so.

Q. So you would have to take each waybill and check it

against a particular tariff and identify it as a competitive rate, commodity rate or class rate?

A. Yes, you would have to do that.

Q. Now then, you are still advocating that this information is so important, that is to say, it is so important to know the volume of traffic moving at competitive rates, that it would warrant that kind of activity?

A. Well, I presume that that is not the only aspect that would be important of the waybill study. There are other uses for that study but it would in addition to other things, provide this information.

Q. Well, it would, I assume, provide the same information you are . advocating for competitive rates with regard to all classes of rates?

A. Yes.

Q. I am putting it to you would you still think that the mere matter of volume moving for different classes of rates would justify that as a continuous process by the Board?

A. I think so, yes.

Q. Now then, one of the things you mention there - and as I say I am not going through all of them - is the question as to whether competitive rates are compensatory. Now then, I want to see what is involved in that suggestion. Would you believe that the continuous study by the Board to find whether the rates were compensatory would involve actual studies of actual cost or would you be content with the rule of thumb being applied in this continuous process?

A. Well, in the course of the continuous supervision, they would, of course, first apply rules of thumb. If subsequently any issue developed, they might go into that matter more deeply.

Q. Well, then, this continuous process as such does not inherently involve a continuous process of studying cost of

movement of competitive traffic all over the country?

A. Not necessarily, no.

Q. You mean to say that only in special cases would that be necessary?

A. The rule of thumb might separate the sheep from the goats so to speak, and they might find certain rates at a certain level and then pick out those that needed special study. Is that what you mean?

Q. Yes.

A. If there was any reason to believe that those might offend.

Q. How would they get "reason to believe" in your view that they were offending?

A. By the so-called rules of thumb we have been speaking about.

Q. Have you any views as to the rules of thumb that ought to be applied?

A. I have given it no great thought, no.

Q. Have you given it any consideration which would lead you to make a suggestion?

A. Well, one of the rules of thumb that is applied at the present time is the rate per ton mile, but I would not suggest that that is necessarily the only or a satisfactory one it itself.

Q. I suppose the rate per car mile and the rate per ton mile?

A. There are a number of indices which they might use.

Q. So this would satisfy that condition of the continuous supervision by the Board if they were to apply such rules of thumb as we have been discussing, leaving for special study, matters that appear to require it after applying these rules of thumb?

A. I think they would have to operate something along

that line, yes.

Q. How would you suggest that they determine, as a matter of continuous activity, the extent to which the competitive rates reflected current competitive conditions?

A. I think they would take into consideration such outside factors as the level of prices and costs and the volume of business and similar things.

Q. Well, the very first in importance would be determining what the other competitive carriers were charging, wouldn't it?

A. That might be one of the things which they might take into account.

Q. Now, would it be part of your suggestion that the Board, as a continuous matter, should be investigating the charges made by, say, motor carriers in Ontario?

A. Well, they already call for this information in the paragraph we have quoted from.

THE CHAIRMAN: I notice that.

MR. EVANS: But I am speaking now of this continuous study.

A. Well, if there was reason to suspect that certain rates did not, they might ask the railways to file that same type as of the date mentioned.

Q. I see now what you have in mind. I did not see before. What you are saying is that they might merely investigate this by asking the railway people what they saw was necessary?

A. Apart from what other knowledge they might have, access to.

Q. What I was really trying to find out was whether you went far enough to say you would not trust what the railways said - "We would go out and we would ascertain for ourselves what these competitive conditions are and what rates are being charged by competitive carriers"?

A. That would depend on the circumstances.

Q. Well, how would you determine whether the Board in a given case should do that or should not? It is a continuous study now we are talking about.

A. Yes. Well, I should think if conditions had been in a period of stability in which there was no outward signs of any change in conditions, that they might perhaps be entitled to assume that no change had occurred in the status of competitive rates or conditions.

Q. Well, actually it really gets down to this. There would be considerable difficulty in determining first what the motor truck carriers were charging if they did not file their rates; second, whether those rates were lower than were compensatory to the trucks and kindred questions of that kind which the Board might have great difficulty in ascertaining?

A. We do not expect them to obtain detailed information of that type, no; we are referring to general economic conditions.

Q. General economic conditions?

A. And such detailed information as is accessible to them.

(Page 11552 follows)

Q. Yes. I think we understand one another. When they are to ascertain whether the competitive rates on the railways were necessary to meet competition, they would first get information from the railways, second from such other sources as were available to them, and if they had no other sources, you have nothing to suggest? I am only trying to find out what you want, that is all.

A. Well, I think that we cover it, actually.

Q. Well, there are a number of other things I could deal with, but I think we understand one another. Now, if I might turn to your second brief for a moment -- this is the brief, my lord, entitled "Regulatory Legislation" which was put in at the same time as the brief about which we have been talking. On the first page, Mr. Darling, there is just a little matter I would like to clear up. You have been speaking about the early history of regulation and the conditions calling for regulation, and I see in the last sentence but one on the page this statement:

"In Canada control over rates by Parliament could not be exercised until a dividend of 15 percent had been paid by the carriers."

Now, just to get that into its proper perspective, that was a provision in the Railway Act of the time?

A. The Railway Act of 1868.

Q. Yes. A provision by which the right of Parliament to call for a reduction in rates was not to be exercised until dividends had exceeded 15%?

A. That meant in effect control, because Parliament would not likely take action to increase the rates.

Q. I am just trying to get this properly oriented. That was done away with in 1888, was it not?

A. I believe so.

Q. Now, just to get this thing still more clearly

on the record, as far as the Canadian Pacific was concerned, they were never on that 15% basis?

A. I do not think so. They were under their own statute, I believe.

Q. Yes. They were under a special section in their Act of Incorporation, which applied the general Railway Act in that particular to limit the matter to 10% instead of 15%?

A. Yes, sir.

Q. On page 2, you have been dealing with the stage of regulation by the Privy Council and the emergence of the period of regulation under a Board, and in the middle of the page you speak of the Act as being much more comprehensive, the Board's powers and responsibility, and so on, "the general approach to the problems of regulation was fundamentally the same," and then this statement:

"The Board was to accept the rate structure in the form in which it had evolved . . ."

THE CHAIRMAN: Where is that, Mr. Evans?

MR EVANS: That is exactly at the middle of the page.

Q. Now, just in order to get that clear, you have nothing to point to in the Act that says that the Board was to accept the rate structure in the form in which it had evolved?

A. That was our expression of opinion. The fact that the Act was not explicit as to what the Board was to do in the way of a form of the rate structure left the Board in the position that it was more or less to await complaints, specific complaints, and deal with them on a particular basis.

Q. Now, when you say the Board was to await complaints, are you suggesting that the section giving the

Board the right to---

A. No, I am not speaking of the right of the Board to act on its own initiative, which I presume was in in 1903, just as it is today.

Q. You see, your language is rather difficult for me to follow. You say the Board was to do these things, and was to consider these things, and was only to hear matters on complaint?

A. I think that was the Board's interpretation of the intent of the statute.

Q. Yes. But so far as the Board's powers are concerned, there was no provision in the Act, nor is there anything that impliedly prevents the Board from considering some different form of rate structure, either on complaint or on its own initiative?

A. That is true, but we would say that the very breadth of those powers was a factor in the Board's interpretation of the Act. When you have powers as broad as that, you cannot just refer to any particular measure and say, to gain authority from the very general wording of the Act, that that is what the Act requires or justifies.

Q. You think that the broader the powers the less likely the Board is to exercise them? Is that the theory that you advance?

A. I think they are properly interpreted there as more or less reserve powers; they are to avoid the Board becoming snagged by technicalities and so on in carrying them out.

Q. As a practical matter, is it not possible that the fact that the Board does act more often on complaint than otherwise, is that the normal concept about how people react when they are hurt is that they complain?

Would not that perhaps account for the fact that the Board's activity has been largely on matters originating by complaint?

A. We anticipate that that is more or less the way any body of that type must work, but it matters very greatly the type of complaints which are considered to be valid or the type of things which the Board considers the Act to prohibit, and if the Board has consistently held that certain complaints are not valid, I think the effect of that is to discourage the raising of further complaints of that type.

Q. Now, have you anything special in your mind where the Board has consistently held that complaints are not valid?

A. Well, we might take as an illustration -- not that they have consistently held, but they have on frequent occasions held that there is nothing in the comparison of the rates themselves which is valid to attack those rates, as in the case of regional discrimination. A consumer, for example, might point to a different rate which he paid in Alberta to what people in Ontario paid. I think that any consumer who looked into the issue would see that he would have a very difficult job, under the present interpretation of the Act, to establish any complaint on that basis.

Q. Well, that is quite a different matter from whether the Board does it on complaint or on its own initiative. I thought you were rather complaining that the broadness of the powers of the Board had made it almost inevitable that the Board never acted except upon complaint. Now, I am not discussing with you the difficulties of the consumer in getting a complaint, because I have got another subject to discuss with you on that later, but I thought we

were limiting ourselves to a discussion as to what was likely to have been the reason for the Board acting mainly on complaint?

A. My answer, I believe, was that there was no specific directive in the Act which required any recasting of the rate structure, so to speak.

Q. Then that is the reverse of the way you put it, that the Board was to treat the rate structure in its present form and not to change the form?

A. Well, I am not saying that that is our opinion there. I do not think you interpreted that correctly.

THE CHAIRMAN: How often has the Board proceeded to erect new rate structures?

MR EVANS: I beg your pardon, sir?

THE CHAIRMAN: How often has the Board investigated the situation and erected a new rate structure? Just that one in 1925?

MR EVANS: Oh, no, sir. The first big case that I can recall -- there were two or three cases. There was one involving Pacific coast cities; I have not got all these right at my fingertips, but I remember the Pacific Coast Cities case, and there was one in the east, the international rates case. Those all dealt with general scales of rates---

THE CHAIRMAN: Were they local investigations? You are talking of the west and the east.

MR EVANS: Yes, they were local in those cases. In the international rates case they were investigating the--

THE CHAIRMAN: I am not talking of that sort; I am talking of the general rate structure. For instance, just now they have been directed to erect a rate structure which will be equal in its incidence all over the country. They were instructed and did the same thing in 1925.

MR EVANS: Yes.

THE CHAIRMAN: Now, are those the only two cases where they have proceeded to do this?

MR EVANS: They are the only two occasions where they have done them as one whole problem.

THE CHAIRMAN: That is what I mean. You see, I think what Mr. Darling is getting down to is that in 1903, when the Board came into existence, it did not there and then overhaul the whole rate structure of the country and recast it; it just left it as it was and let things work out.

Q. Isn't that what you were saying?

A. Largely that, sir.

Q. Only you put your language, though, so as to mean that the Board had no power to do anything else?

A. We do not mean that.

MR EVANS: I would like to reply to you, sir, because---

THE CHAIRMAN: Yes, I would like to hear you.

MR EVANS: Because we must not misunderstand one another. In the first instance, I think it would be perfectly amazing if a newly-appointed Board should attempt to overhaul the rate structure as a whole, but these cases I was going to give to you have had their effect on the structure, have had their effect on these regional differences, and in collection or in total they are in the result much the same kind of general inquiry, I should say for this reason: in the western rates case, that went on for about three or four years, it began in 1914.

THE CHAIRMAN: Yes, I know about it.

MR EVANS: Now, during the same period, in 1916, which was part of the same period they were working on the western freight rates inquiry, they were also conducting

the eastern rates investigation, and those two were in part almost simultaneous. Now, the inter-relationship between the west and the east was one of the principal discussions in the judgment in the western rates case. They were considering the complaints of the west against the lower rate structure in the east; they were considering the mountain differential. All these things did indicate an activity in the general direction of overhauling the rate structure.

Now, another thing happened that is not generally realized as having been important. When the increases in rates came during the war and subsequent to the war -- I am speaking of the first war -- similar complaints were being made that the disparities which had ~~not~~ been complained of had not been fully removed in these general inquiries, and the Board gave effect in those revenue cases to some of these complaints, by giving either different increases in the west than in the east or in some other way reducing disparities that were alleged to exist, and that was true of the increase in 1918 and of the increase in 1920.

Then the Board on its own initiative -- I am not really giving evidence; it is all recorded in the cases -- the Board then embarked at the conclusion of the hearings and decision of the 40% case in 1920 upon inquiries of its own. It travelled, as I recall it, pretty well all over Canada in 1921 and 1922. As a result of those inquiries it reduced the rates from the high that had existed after the war.

Now, that process cannot be said to have been dormant merely because they had no wide-open charter, as they had in 1925, or as they have under P.C. 1487 today. That process was a substantially continuous process from

the beginning of those early cases to which I have referred your lordship, down to and including 1927.

THE CHAIRMAN: All right, then.

MR EVANS: Q. Now, Mr. Darling, at the bottom of page 2 and carrying over to page 3, you say this:

"We can accept the principle of minimum regulation as one objective of a sound transportation policy, if by that is meant that there should not be regulation merely for the sake of regulation."

Then you go on to say that the objective should be the attainment of a fair and reasonable rate structure. Now, would you agree with me that the question as to the extent of the proper level of regulation or the need for regulation will be influenced by the extent to which the regulated utility is subjected to competition?

A. Not necessarily, no.

Q. When you say not necessarily, as a matter of general principle you would agree this far, would you not, that competition does remove the element of monopoly and does regulate in the sense that it prevents, where it exists, too high a rate being charged by a utility?

A. That is true.

Q. Now, as a matter of principle would you not agree with me that the development of competing forms of transportation in recent years has, if anything -- I am not asking you to measure the extent of it -- has, if anything, reduced the necessity for regulating railways from the monopolistic standpoint?

A. Not necessarily. It is possible to say that it has given rise to new types of problems.

Q. I am not doubting that; it may have given rise to new types of problems; but, taking it as a general principle, would you not agree that the development of new

forms of transport -- air, bus, truck, motor car, water, and so on -- all those have introduced an element of competition, and, to the extent that the competition is effective, have reduced the need for regulation?

A. It depends on the way in which that competition has come. If there are areas where there is extensive competition, and the same carrier is also operating in areas where there is very, very little competition, it seems to me that the need for regulation is much the same as in the past.

Q. Yes. Well, if the competition, we will say of motor cars, exists throughout Canada on substantially all of the rail routes and between practically all the rail points, would you not agree that that would be a factor in determining whether more or less regulation of railways was required?

A. I do not see that there is any requirement for the relaxing of regulation when the railways are permitted to meet competition.

Q. I am sorry, I did not get that.

A. I say I do not see that there is any case made out for the relaxing of regulation if the railways are able to meet competition under the existing regulation.

Q. Perhaps we got at cross purposes. There have been suggestions made here -- and, just taking the first one that occurs to me, notably the Province of Manitoba; which went for a much more restrictive type of regulation on railways and---

A. Did you say restricted or restrictive?

Q. Restrictive.

A. Restrictive?

Q. Yes. Now, I had in mind that, and the need which Manitoba found in its view for increased rather

than decreased regulation, and I am putting to you a question as to what your view is?

A. I think under present conditions the need for regulation has not diminished.

Q. Not diminished?

A. No.

Q. Because of the competition?

THE CHAIRMAN: Q. Not what?

A. Diminished, sir.

MR EVANS: Q. Well, would you agree with me that the regulation so far as it involved the need for protecting the public against monopoly has diminished?

A. No, I think it has perhaps transferred the problem. If there are differences in competitive conditions, and certain areas are still largely subject to not only monopoly of rail transport on local but on long-haul traffic where competition has not yet made any serious attacks, I think the interests of those people must definitely be protected against the effect of lower competitive rates elsewhere, which might affect the revenues of the carriers and might in the long run mean an increase in their rates. I think that is a problem which arises.

Q. But, at all events, you do not see necessarily that the monopolistic aspect of railway operations has reached the point that would require additional regulation in that respect, do you?

A. To deal with that particular problem?

Q. Yes. In other words, what you are saying to me is that these are short-haul competitors, and you have still got to protect the shipper on the long haul. I am putting to you that you had to protect the shipper on both short and long haul before these competitors came

about. Now, I am suggesting to you that the short-haul competition at all events removes some part of the monopolistic aspect of railway operations?

A. Very unevenly, yes.

Q. Unevenly in the sense that competition is not even?

A. Yes.

Q. Would you agree with this statement: "The junction---"

MR FRAWLEY: Well, the ordinary rule, I suppose, is to tell the witness what the statement is.

MR EVANS: I am going to read it to him and ask him if he agrees with it, and then I will be glad to tell my friend where it comes from.

MR FRAWLEY: Well, so long as you do all that before the witness is expected to answer, that is all right.

MR EVANS: Q. Would you agree with this statement -- it has to do with the United States, competitive conditions in the United States:

"The junction of depression traffic and the competition of new transport agencies made it evident that Congress either would have to relax railroad regulation or impose higher standards of public responsibility and competitive practices on the new agencies."

MR FRAWLEY: I think, my lord---

THE CHAIRMAN: Of course, we are not trying a case in court.

MR FRAWLEY: That is true, sir.

THE CHAIRMAN: You are trying to give us information as well as you can; we realize that. Nobody is being bound to his detriment.

MR EVANS: I have no objection.

THE CHAIRMAN: The point is this: You just read something that somebody said in the United States about Congress. I know you are remembering all the time that Parliament has no jurisdiction over the competitors you are talking about now -- truckers, for instance.

MR EVANS: No, sir; I am putting a question of principle to him.

THE CHAIRMAN: What is the principle? Let us hear it again.

MR EVANS: The principle as to whether competition by new forms of agencies has not reduced the need---

THE CHAIRMAN: Please read that again.

MR EVANS: The book I am reading from is "National Transportation Policy" by Charles L. Dearing and Wilfred Owen, published by the Brookings Institute in 1949, and the passage occurs at page 168, at the bottom of the page.

THE CHAIRMAN: Would you read it again?

MR EVANS: "The junction of depression traffic and competition of new transport agencies made it evident that Congress either would have to relax railroad regulation or impose higher standards of public responsibility and competitive practices on the new agencies."

THE CHAIRMAN: It is that last part that attracted my attention. Parliament has no power to impose any conditions at all upon agencies that are beyond its control, such as provincial agencies. I just note that as we go along.

MR EVANS: Yes. I am interested in the principle, how that principle---

THE CHAIRMAN: The other part does remain, that on account of these conditions regulation ought to be

relaxed. That is about the extent of your argument, is it not?

MR EVANS: Well, it is either that they should be relaxed or that a new responsibility should be placed upon the competitor -- equal responsibility.

THE CHAIRMAN: Who is going to place the new responsibility upon these particular competitors?

MR EVANS: Well, there may be a question of jurisdiction involved. Parliament certainly has jurisdiction at least in one branch.

THE CHAIRMAN: Well, in shipping; you mean in shipping, do you?

MR EVANS: No, sir; in motor competition.

THE CHAIRMAN: Oh, yes.

MR EVANS: It has unquestionably in shipping, it has unquestionably in air, and it has unquestionably in at least part of the motor field.

THE CHAIRMAN: When you say great part, I do not know how much; I do not know to what extent.

MR EVANS: I do not think I said a great part; I said at least a part; that is the international and interprovincial.

THE CHAIRMAN: We understand each other.

MR EVANS: May I put the question, then, to the witness?

THE CHAIRMAN: Oh, yes, certainly.

MR EVANS: Q. What is your view now?

A. I would say that, provided a reasonable freedom is granted to meet that competition, there is no change in the type of regulation required.

Q. Then reasonable freedom -- would that involve the right to make agreed charges?

A. It might or it might not.

Q. Well, I would like to know your view?

A. I don't think we say that it would.

Q. You in fact say in another part of the brief that it would not?

A. Would you refer me to that?

Q. Will you say I am wrong?

A. I want to get it clear what you are putting to me.

Q. I am saying that elsewhere in another part of another brief you take the position, or at least Alberta takes the position, that agreed charges are an improper remedy?

A. Yes.

Q. And that we should not be permitted to make these agreed charges. Now then, this relaxation that you have conceded may be necessary--what form would you think it should take?

A. Well, along the line we have stated in this brief dealing with competitive rates.

Q. In other words, you say make a conventional competitive rate?

A. I do not think we are compelled to accept any kind that might be devised to meet competition by the general proposition you have put to me.

Q. I did not say you were. I am getting your views. That is what I am trying to get. Then, in the second sentence at the top of page 3 "The objective of rate regulation should be the attainment of whatever form of rate structure is held to be fair and reasonable". Now, is it your view that that is not the case under the present Act?

A. Well, we have certain complaints and I suppose one could deduce from that that we are not satisfied with the present Act for which we have also suggested amendments.

Q. Well, I asked you a question as to whether it is your view that it is not the objective of the present Act to attain

whatever form of rate structure is held to be fair and reasonable?

A. I certainly do not question the intention of the Act, no.

Q. Then, further down the page you make the statement:

"The distributor who handles the goods will be interested in complaining about rates only where his competitors obtain more favourable rates into the same markets".

Now, would you not agree that the producer or distributor as distinct from the consumer (I am reading from page 3, sir, in this new brief) has an interest beyond that where he is meeting competition of other producers?

A. You mean in obtaining still more favourable rates?

Q. Yes, to get more of his goods moved and widen his own market even though he has not got competition?

A. He might have.

Q. But the fact is he has.

A. I think if the fact is that if he asks for a lower rate and it is not going to make any difference on his sales, I don't think he is likely to ask for that rate.

Q. But can you assume it is not going to make any difference in his sales? Would you say he is not interested in selling a product at as low a price as is necessary to enlarge his production?

A. Yes, but he is not going to make a general complaint on the basis of just wanting his rate lowered.

Q. Now then, at the bottom of the page you say: "It is significant that the majority of complaints to the Board regarding rates have been complaints to the Board arising from discrimination" and so on--"In fact, the judgments of the Board may almost be said to have had the effect of restricting complaints to those in which the complainant is able to assert

discrimination between competing interests. This limitation, particularly in cases of regional rate differences, effectively rules out complaints by or on behalf of the consumer". Now then, by that do you mean that the Act in any way restricts the people who may make complaints to those who are directly and financially interested in a particular rate saving of the consumer?

A. I don't know of any positive restriction.

Q. Well, do you not know that the Board in fact has held that that does not exist, that it may determine where there is a personal interest and that it has done so without regard to the direct interest under the law?

A. We are not disputing the right of any person to go and make a complaint to the Board. We are talking about complaints that have a chance of succeeding.

Q. Well then, what you mean is that the consumer finds his great difficulty because he has difficulty in proving unjust discrimination or that he is hurt?

A. His evidence does not go anyway towards removing regional discrimination and he has a very difficult time in proving unjust discrimination.

THE CHAIRMAN: What would the consumer likely complain about?

A. Well, the individual consumer, sir, as I think is the point we are trying to make, has very little which ^{has} been recognized as such. The consumer complaints are only sizeable when they are taken collectively. The individual consumer has no complaint or cannot establish unjust discrimination if all the consumers in the same city are similarly treated, but as to the general level of rates or the difference in regional rate levels, I don't think that the testimony of an individual consumer could effect that.

Q. I am just asking you. You are talking about the

inability of the consumer to attack those rates. Isn't that what you are talking about?

A. Yes.

Q. What do you want done about it?

A. We would like these anomalies removed such as differences in rates.

Q. You mean to say you would like the Board to increase rates from the consumers point of view as well as from the shipper's point of view?

A. Well, we think we would always want them to have that in mind, sir, yes definitely.

COMMISSIONER ANGUS: In an application for a general freight rate increase the consumer would be heard if he wished to argue that the level was too high?

A. Certainly.

THE CHAIRMAN: I don't just see what you have in mind. There is nothing to exclude the consumer, if he can make out a case?

A. Well sir, if we take the case of interline rates, where a certain town may be paying 60% higher to get its cement in, if I am building a house and I take a complaint to the Board to argue that my rate is 60% higher than another not-too-distant town on a single line haul, I don't think I have enough to establish that, because as soon as I establish my complaint, sir, immediately it becomes evident that it is not a particular issue involved, a particular consumer, but a case of the rate scale as a whole, and to relieve me would require the changing of the whole rate scale.

Q. Well, if that is a difficulty, how are you going to remove it?

A. By equalization, sir, and then permitting such departures as are justified.

Q. Doesn't it all come back to this plain position that

Alberta simply says this, that the Province wants mileage equalization to begin with?

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: Then, secondly, they say "However, there are cases where that rule may have to be departed from" and give as an instance competition. Their position is very simple.

MR. EVANS: Yes, but the results of it are not so simple.

THE CHAIRMAN: It might spin out forever but that is their position.

MR. EVANS: The results of that are not simple.

THE CHAIRMAN: I know the results are not simple but here we have this case. We are getting down now where Mr. Darling says the consumer is not sufficiently empowered to make his case and have it acted upon. Is that what you say?

THE WITNESS: I am simply saying there are many rate anomalies which do affect consumers but they are general rate anomalies and cannot be defeated by particular individuals.

Q. Well either there is some use in bringing that in or there is not. Why do you bring it in?

A. Well sir, we think -

Q. If it is a grievance, how do you propose that it should be remedied?

A. We propose you start from equality and in that respect you start out with a prima facie justice to all parties including the consumer. Now, if there are maybe departures for different types of rates -

Q. You say mileage equality in itself does give justice to everybody, - railways, shippers and consumers?

A. Well, it is justice as a starting point.

Q. And consumers?

A. Yes.

Q. And the other times you depart from it you mean would be in the interests of the railway, the shipper and the consumer?

A. Yes sir.

Q. Now, how are you going to bring that about? How are you going to have them attended to?

A. Well, his rates are presumably protected in the first instance by the establishment of equality.

Q. Yes, you have said that. Equality would be as fair to him as the shipper and the carrier but then when any departure from equality comes along, you say it injures him or it may injure him as a consumer, although it does not injure the shipper or does not injure the railway. Now then, you say, therefore, he should be considered, but how are you going to bring him into consideration? What is the machinery you suggest?

A. Well, I don't know whether I understand your question, sir.

Q. Well, I am trying to understand your brief. You say here the consumer. Now what are you going to do about it?

A. Under the present conditions, that is an injustice to the consumer, the existence of these rate anomalies. Now then, removing those we say that substantially justice will be done to the consumer. If after that any particular consumer has a complaint he would, of course, be in the same position as he is today to raise it.

Q. If all departures from the rule of mileage equality are ironed out, if all competitive rates are found to be just and equal and any other rates are found the same, then the consumer has no complaint. Is that it?

A. We think that his position then should be satisfactory but I would not disbar him from making any such complaint if

he does that.

Q. Well, he is not disbarred today?

A. No, but he is not able to get the relief to which we say he is entitled.

Q. But he is in ignorance of his own right?

A. He knows nothing about freight rates - I guess you could put it that way.

Q. What are you going to do about it?

A. Establish the equality to begin with.

Q. I know that. We have established that hypothetically. We have equality now and then you yourself say "There must, however, be certain departures from it" which must be justified under certain rules?

A. Yes sir.

Q. Well, when all of that is done, then you find that the consumer has not yet been sufficiently considered and he may be suffering. But what are you going to do about it? If he knows it himself he could be heard, couldn't he?

A. That is right, sir.

Q. Then why complicate the situation by trying to introduce him where he does not want to be?

A. We do not think he will find it necessary to make a protest, sir, if we were to establish him on a basis of equality to begin with.

COMMISSIONER ANGUS: The only consumer grievance you would consider that concerns him is that concerning regional discrimination?

A. Yes.

MR. EVANS: I think I might add our friends of the provinces have for the past three years claimed they had very particular and principal interests in the interest of the consumer and in order to make clear to your lordship the position of the Canadian Pacific on this question of

equalization, I want to make it perfectly clear that the difference between the Canadian Pacific and the Province of Alberta or anybody else on the question of equalization is as to the practical possibility of complete equalization only. Our agreement with the principle goes a long way and I think it is only right that we should explore some of the fallacies we see in this total equalization scheme that is being put forward.

MR. FRAWLEY: "Total" is your own word, Mr. Evans. The brief speaks for itself.

THE CHAIRMAN: Is there anything left, Mr. Frawley? Supposing you have equality to begin with and you have a departure from it in the case of a competitive rate and that that is inadequate and is gone into and it is found that the competitive rate is justified, when all that is done, then do you say: "What about the consumer?"

MR. FRAWLEY: No, I think he has been taken care of necessarily in arriving at the point where the competitive rate is a right and reasonable rate.

THE CHAIRMAN: Without being there to be heard himself?

MR. FRAWLEY: Yes, without being there or counsel being heard.

MR. EVANS: On page 5, Mr. Darling -

THE CHAIRMAN: Then Mr. Frawley, we should not then take up any time discussing him either in the brief or outside of it?

MR. FRAWLEY: Separately sir.

THE CHAIRMAN: Yes.

MR. FRAWLEY: No, he has only been discussed because up to now he has suffered and we think he will not suffer.

THE CHAIRMAN: He has suffered incidentally on account of the lack of proper regulation elsewhere?

MR. FRAWLEY: Yes, because in the last analysis he is

the only one that does suffer because he pays the freight rate, not the shipper or the man at the freight shed.

THE CHAIRMAN: If you render justice to all shippers and to all localities, does that take care of the consumer?

MR. FRAWLEY: It should, sir, yes.

MR. EVANS: Now, there are two other aspects of this and I don't want to leave them. The first one is this; there is a suggestion, is there not, on page 4, that one way in which the consumer is hurt by increases in rates is the pyramiding by the wholesaler and retailer in adding cost against a percentage increase in increased differences?

A. That is so, yes.

Q. Now, on that point don't you agree with Professor Locklin's view of that?

MR. FRAWLEY: I would almost say yes to start with.

A. I don't know what Professor Locklin's view is.

MR. EVANS: Then I shall be glad to read it to you. I am reading from page 27 of his Economics of Transportation, third edition:

"It is said that freight rates are pyramided and a moderate increase in rates results in increasing prices by a greater amount. This pyramiding of prices is alleged to result from the practice of middleman and wholesaler of selling goods at a certain percentage over the price they pay. Thus, if a freight rate increase raises the price of a commodity to the retailer by 10%, the retailer sets the price on his goods at 25% above cost and the 10% increase in rates increases the price to the consumer by 12½%. The more often this process is repeated the greater becomes the cumulative effect of the rate increase. This pyramiding undoubtedly occurs as a temporary result of rate increases but the forces of competition tends to

eliminate it in the long run".

Do you agree with that?

A. Where competition is present.

Q. Do you agree with that statement?

A. Yes, where competition is present; while perhaps the prices might be knocked down again but, of course, the complaint here is with regard to goods which we receive from Eastern Canada which are not competitive, at least as far as freight rates are concerned.

COMMISSIONER ANGUS: When you say "Where competition exists" do you mean competition between districts or between carriers?

A. I don't know just what the submission had in mind, sir, but I think perhaps it meant carriers.

MR. EVANS: Well, it obviously means the competition between the producers of goods?

A. I think that depends upon the circumstances and the economic conditions at the time whether we are in a time of rising prices or lowering prices. Competition is intermittent or varies in severity.

Q. All that Professor Locklin said and all that I am asking you to agree with is "that the forces of competition tend to eliminate it in the long run". Would you still prefer not to agree with that or disagree with it?

A. I think it is only a case where competition is present - price competition; I might even limit it to that.

Q. Now then, on page 6 there is another aspect of this -

MR. FRAWLEY: I do not quite understand my friend Mr. Evans. Time and time again, as we went through the country, and we heard this complaint, it was from the Canadian Pacific that it was always established that the retailer added to the freight rate, and that sometimes the freight rate increases that we were complaining of, were after it had gone through the hands of the

wholesaler and the retailer, and I thought my friend supported the proposition that the consumer paid more because of the fact that when the goods got into the hands of the retailer and wholesaler they added on their margin to the freight rate.

THE CHAIRMAN: I think you had better talk about it after lunch.

(At 1 P.M. the Commission adjourned to
resume again at 2.45 P.M.)

(Page 11585 follows)

AFTERNOON SESSIONMR. H. J. DARLING RECALLEDCROSS EXAMINATION BY MR. EVANS (Cont.)

THE CHAIRMAN: Very well Mr. Evans.

MR. EVANS: Q. On page 5 of the so-called "Regulatory Legislation" Brief, would you kindly direct your attention to that rather long paragraph which starts about one third down the page.

A. Yes.

Q. There you are speaking of the difficulty of assessing unjust discrimination, and you say:

"A ^{mere} ~~new~~ comparison of two different rates on similar movements in this view has no meaning unless at the same time there is some concrete evidence of loss or disadvantage."

Then you say:

"But to demonstrate loss or disadvantage of this nature involves going beyond the rates themselves and attempting the well nigh impossible task of assessing the value of what in many cases must be purely suggestive factors:..."

If I understand your Brief, what you say there and in the remainder of the page, is a criticism of the present law which requires proof of unjust discrimination.

What I would like to get from you is this: what have you in mind when you say that the proof of this involves the well nigh impossible task of assessing the value of purely subjective factors?

A. In the first place, our criticism is directed toward the requirement that unjust discrimination be proven in cases of what are really regional discriminations. The other question you ask as to the subjective factors, they

simply illustrated by the effect of the town of Simcoe cases, where the amount of detriment was shown, as I understand it, and the Board had to say: that was not sufficient. On whatever basis that was made - and their decision there might be quite in order - nevertheless it was not based on the actual difference in the rates. It involved going beyond the rates and deciding whether this was a disadvantage to the company involved.

Q. Yes. And quite apart from the town of Simcoe case, which I am prepared to argue with you at some length if you desire, what I want to get from you is; whether you consider that the Board, as a practice, requires that something be evaluated in terms of money disadvantage?

A. It may not always be money disadvantage.

Q. Well, do you know of any case, at any time, where the Board has based its judgment on a dollars and cents basis and has attempted to evaluate in dollars and cents the amount of the disadvantage?

A. I think the point was that it has made its judgments going beyond those concrete factors, if I may put it that way.

Q. All I want to get clear from you is, whether you wish it to be inferred from this part of your Brief that the disability of which you complain is due to the difficulty of proving a dollar amount of disadvantage or damage?

A. I would say yes to that, if you were talking of regional discrimination or rates of general application. But it may be that in a case of unjust discrimination, as the Board has defined it, it does get down to a case of evaluating not only money loss, but the importance of other factors.

Q. When you say "evaluating money loss", do you assert that that is the practice of the Board in

determining whether unjust discrimination exists?

A. I have not said that, no.

Q. But I want you to say whether you do or not.

A. I have not said that.

Q. Then what do you say?

A. No.

Q. Is it so that in the case where a complaint of unjust discrimination is made that any proof of disadvantage short of purely negligible disadvantage is accepted, without attempting to evaluate it in dollars, as proof of unjust discrimination?

A. I think that is probable.

Q. Yes. You do not infer that there had to be an evaluation which is a concrete evaluation of the damage claimed?

A. No, we had no idea of that.

Q. Now, coming down to the latter part of the page, you go on to say:

"If rate differences on similar traffic in themselves are not to be considered prima facie evidence --"

and so on. And then you speak of these two alternatives, and you say:

"Either the absolute amount of the detriment is to be conclusive, in which case the larger the shipper's traffic, the easier it will be for him to establish his case, and conversely for the small shipper; --"

Now then, do you wish to convey there that the Board, in unjust discrimination cases, as a matter of practice, decided the case one way or another, depending on whether the shipper making the complaint is a large shipper or a small shipper?

A. No, but I think they have called for the amount of detriment which could be shown.

Q. In dollars?

A. Not always in dollars, no.

Q. Would I be putting it fairly to you simply to say: That they require there be evidence of a disadvantage not merely just a purely paper disadvantage?

A. It comes down to the other alternative, the relative disadvantage.

Q. I want to take you past the first one. So I think we can agree that this first of the two alternatives is not what the Board in practice has accepted as necessary to prove unjust discrimination?

A. No. I do not know whether they have ever laid down any line beyond which detriment is proven and below which it is not.

Q. Have you anything in your mind? I want to get everything you have in your mind. Do you wish it to be inferred that the Board has, as a matter of principle, decided unjust discrimination cases on questions involving the size of the shipper?

A. No, that is other than the effect, that if the size of the shipper is taken into account, it may involve either of these two alternatives.

Q. Do you remember any cases where the absolute amount of the detriment has been conclusive?

A. No, I do not.

Q. When we come to relative amounts of detriment, that is your second alternative, you should say this: Should the relative amount of the detriment be conclusive, then the Board would be in a position of having to examine the business affairs and the

financial standing of the complainant. Do you know of any case in which the Board, in an unjust discrimination case, has gone into the business affairs or into the financial standing of the complainant, or has suggested that it would be necessary to do so in determining whether unjust discrimination existed?

A. It must have some nature of the complainant's business in such a way as to establish what his detriment is.

Q. Of course, but is not the plain inference here that the Board has got to find out the amount of the detriment by examining the business affairs and the financial standing?

A. That is pushing it to an extreme case. If they wanted to determine that detriment to any degree of precision, then that is what they would have to do.

Q. You said when rate differences in themselves are to be taken, either one of those alternatives must be elaborated. And you say you don't know that they have done the first, and you are now saying that they might have to do the second. Now I am asking you whether you have ever seen any decision of the Board of Transport Commissioners which said that: before we can find whether or not unjust discrimination exists, we must examine into the business affairs and financial standing of the complainant?

A. I think you are interpreting very literally what is generally in there, Business affairs and financial standing. I don't think we wished to convey that there was an audit of their business.

That would obviously be an absurd contention. We simply say we must evaluate what that detriment means in terms of the complainant's business. How else could they arrive at any decision?

Q. The difference between us is in the use of the word "evaluate". I suggest to you that the principle adopted by the Board is to find out whether there is detriment, and if there is detriment, to find out if there is unjust discrimination.

A. I could understand you if there was a meaning attached to the word "detriment". What does "detriment" mean? I could agree with you in principle.

Q. Assuming we won't have an argument on what "detriment" means, I would agree with you that they would have to know what kind of business the complainant is in. But I suggest to you that the concept involved in this suggestion in your brief is that the Board has to go out and evaluate in terms of dollars the financial conditions of the company and the extent of the detriment. Is that your view? Or do you wish to follow it up?

A. I think you are just pushing the thing to an extreme. I have explained what we meant by that. It involves an evaluation of what the detriment is relative to the complainant. They must know something about his business and how he is supposed to have been harmed.

Q. What has the financial standing of the complainant got to do with it?

A. Presumably detriment to a small individual might loom larger than the same absolute amount to some country-wide corporation.

Q. Presumably; and I ask you if in effect the practice of the Board proves it is there?

A. If the largest corporation in Canada complains

about a \$10 detriment, I do not think the Board would attach as much weight to it as if a farmer came up with the same detriment.

Q. You would ask this Commission to adopt some new principle because you thought it was common sense?

A. The new principle is to object to rates where there is unjust discrimination.

MR. FRAWLEY: The Commission will have to study these decisions of the Board, and perhaps there will have to be an opportunity for Mr. Evans and myself to discuss those decisions of the Board. I refer now to page 48 of the judgment in the 30 per cent case, where, in review, the Board says, in quoting from the case entitled "Complaint of the Spanish River Pulp and Paper Mills, Limited, at pages 278 and 279:

"In dealing with the question of discrimination, the matter of detriment, if any, to which the applicant is subjected by the alleged unjust discrimination or undue preference must be considered. Difference in rates is discrimination; but the prohibitions of the Railway Act in regard to discrimination are prohibitions of unjust discrimination or undue preference."

Then, two cases further down, they again look at it in the case of "In Ontario Paper Co. v. G.T.R., 24 C.R.C. 177:

"No evidence was submitted that any rate advantage possessed by any competitor had rendered it more difficult for the applicant company to do business, and the allegation of unjust discrimination was held to be unfounded.

Evidence is required as to how rates complained of react to the detriment of the applicant."

It seems to me, with respect, that it is getting very close to what the witness is telling Mr. Evans. And whether there must be an auditor put in is questionable. But the Board says: We must know the manner in which this detriment reacts to this man's business. I do not press it, but it is not the most satisfactory thing in the world. However, Mr. Evans is entitled to test the knowledge of the witness with respect to these decisions of the Board.

THE CHAIRMAN: Would the task be easier if a formal order were adopted? For the future you say you must begin with equality?

MR. FRAWLEY: Yes.

THE CHAIRMAN: And then you say that any departure from that by way of special rate competition such as commodity rates, while these things are not bad in themselves, the railway would have to come and justify them. Isn't that it?

MR. FRAWLEY: Yes.

THE CHAIRMAN: In that case, then, you would put the proof on the negative side. You would have the railway coming to say: Now, we wish to put into effect this particular rate in this particular locality, and we have to prove to you that in doing so it will injure nobody.

MR. FRAWLEY: Yes.

THE CHAIRMAN: And do you think you are making the problem any easier of solution by doing it that way?

MR. FRAWLEY: I do not know. I presume that we are going to get away from this present concept of unjust discrimination.

THE CHAIRMAN: It seems to me that you make the procedure harder under the new scheme than it is today.

MR. FRAWLEY: I was simply pointing out what the

Board has done in the past and what they have interpreted as unjust discrimination, it is because of this kind of decision. We want to get rid of it entirely and have a statutory equalization.

THE CHAIRMAN: No. You don't want to get rid of it. You want the railways to come and justify it.

MR. FRAWLEY: That is right.

THE CHAIRMAN: Then, where would you be? Here is equalization. Then the railways have certain regulations which they wish to introduce, say a new rate which is competitive, or which is a commodity rate, or whatever it is; and you say: Oh no, you cannot do this. You must have equality. You must justify your act. And then they have to go before the Board and justify it. Is that right?

MR. FRAWLEY: It is a departure from equalization.

THE CHAIRMAN: It is a departure. And would they not have to go through all this procedure, but only in a negative way, which would be much harder to do than in an affirmative way; because if you have a man who is injured, he could show it. But you would have the railways proving that they are not injuring anybody.

MR. FRAWLEY: We would have the railways proving that there are conditions there which warrant a departure from equalization.

THE CHAIRMAN: But if you make it so difficult for the Board to handle the case now, how are you going to make it any easier for the Board to handle it when the shoe is on the other foot?

MR. O'DONNELL: The same thing in reverse.

THE CHAIRMAN: Take any rate you like which is a departure from equality and which is established according to your wishes and put into effect. Naturally

there will be a hearing of the objections as there is today from all those who do not want to see this rate go into effect. Then the procedure would seem to be that the railways must show how you are not hurt or injured in the locality.

MR. FRAWLEY: No. I think the railways would be entitled to establish a departure. The Alberta submission says there are places --

THE CHAIRMAN: Are you getting back to the points which show in this discrimination?

MR. FRAWLEY: I must put that up to the witness, Mr. Darling. I am anxious to know whether, in our equalization scheme, there are departures from it other than there is a concept to what extent the Board's hands would be tied in dealing with it.

THE CHAIRMAN: Would the Board be in any better position than it is today?

MR. FRAWLEY: Oh, I think so.

THE CHAIRMAN: Q. Then, will you tell me how?

A. In the first place, the rates for which we have asked equalization apply to our class rates, commodity mileage rates, and the specific non-competitive rates, certainly not to all classes of these rates. The class rates tend to remain the way they were, apart from the horizontal increases or decreases, and they would require no justification on the part of the railway.

Q. That is the case today, is it not? That is the way those rates go on today?

A. That is right, sir.

Q. Now, under the new procedure, what would happen when the railway departs from any of these?

A. It seems to me that it would have to make out a case, depending whether there was competition; they would

just publish the competitive rates as competitive rates would be published, and that would be all there was to it.

Q. What would he have to do?

A. Show that there was no objection or that there was no unjust discrimination.

Q. So, are you not back to where you are today, so far as evidence is concerned?

A. Yes, but we have removed the historical differences in the rates to begin with which now cannot be attacked under the present rules. The Board may be concerned with unjust discrimination, but having removed these differences, they cannot be attacked, and we would then have cleared up that part of the majority of the complaints.

Q. I thought it was a proposal about unjust discrimination, and that you are pointing out the great difficulty.

A. The great difficulty of attacking what we call regional discrimination.

Q. I know. I am not extending it beyond regional discrimination. How would you be any better off?

A. There would then be no regional discrimination.

Q. What do you mean by "regional"?

A. There would be no difference in class rates or in commodity mileage rates or in specific commodity rates between regions.

Q. You mean, dividing the country into two regions?

A. Generally speaking, sir, yes.

Q. Oh, I see. I didn't know you went to that extent. But taking any one of those two regions, there would still be room for departure from the fixed rates?

A. Yes, sir.

Q. Take in the Maritimes or Quebec or Ontario, there would still be cases where discrimination might be complained about.

A. Unjust discrimination will still be prevented by the Act.

Q. I know, but won't it need to be proved in every case, just as it is today?

A. Yes, sir.

Q. Either by the railway saying that there is no unjust discrimination?

A. No. Unjust discrimination would have to be proven by the person alleging it.

Q. Just as it is today?

A. Yes.

Q. Then why raise all these difficulties for us if you cannot remove them, or if you are bound to them anyhow?

A. There would be differences in rates of different types which we would agree are improper in principle; differences might evolve between two to fifty per cent in rates in certain regions.

Q. You are talking of Eastern and Western Canada when you say "regions"?

A. Any area, sir. When we say that rates should be the same, that would apply to any area in Canada as well as to the two regions.

Q. But right today in a relatively smaller region in Eastern Canada, the railway may table a rate; and then any locality situated here or there may complain about the rate and say that it is unduly discriminatory, may it not?

A. Always.

Q. Then how are you removing the difficulty?

A. We are not. We are leaving section 314 as it stands.

Q. But you would be going into a man's business.

A. In particular cases.

Q. Are we not consuming a lot of time in just pointing out what they are?

A. It simply means that the differences which do not involve unjust discrimination and which would be otherwise justifiable would be removed, and one would not have to make audits unless unjust discrimination arose which the railways recognized as such.

Q. You would have certain things put in such a way in the statute that they never could be changed; consequently there never could be unjust discrimination.

A. There never could be. Anyway, the class rates today are the same as they were, apart from horizontal increases and decreases, the same as they were in 1900. I think in some cases there have been slight changes in the eastern town tariffs, but once they are equal, they are fixed at that level, and there is never any change in the commodity mileage rates.

Q. Well, if there is never any change, there is never any trouble.

A. Except that they are now fixed at different levels.

Q. Yes.

MR. EVANS: We are prepared to equalize.

MR. FRAWLEY: Q. And the kind of unjust discrimination would remain after the full implementation of your equalization plan

A. Very much the same as they are today, actually.

THE CHAIRMAN: There you are. Can you show me how you are going to create a simpler method of

solving the problem every time it comes up?

A. We cannot abolish it.

Q. Can you not tell me yes or no? Is it going to be by the same process?

A. In the case of unjust discrimination, yes, sir.

THE CHAIRMAN: Go on, Mr. Evans.

MR. EVANS: I have to apologize for taking the time that I have.

THE CHAIRMAN: You haven't taken it all yourself. I have taken some of it.

MR. EVANS: I would say that this is germane, and I would ask your lordship to look at the substance of what is said in three or four pages of this brief. It amounts to this: regional discrimination in the past has foundered because proof of detriment was not available. Then they take up several pages in demonstrating what they think is the enormous difficulty of evaluating what this detriment is. And by that process, and having created the impression that these difficulties are enormous, they say: Hereafter we should have none of these difficulties anywhere and we should have no regional discrimination, whether or not detriment can be proven.

I am trying to convey through my cross-examination that this impression of the difficulties of proving unjust discrimination under the practice of the Board as it now exists is inclined to be a little misleading. I am not saying that in an invidious sense. But I do say that the build-up of this brief is such that these difficulties are vastly overrated.

THE CHAIRMAN: Could you show us any cases which the Board had decided which would help us to get at the

principle which they would have put into effect when they hear those cases?

MR. EVANS: I would be glad to do so. There are a number of cases.

THE CHAIRMAN: By this time they must have evolved some principle.

MR. EVANS: The principle is merely that the detriment be proven. The amount of the detriment is not evaluated in dollars. They simply say: If a person can prove he is at a disadvantage or detriment, that is enough for us. It is a vastly different situation.

THE CHAIRMAN: There would be some procedure now, for the disposition of it under the present Act.

MR. EVANS: Q. I am suggesting that there are not these difficulties.

A. It has now got to be a difficulty which existed before it can be attacked.

COMMISSIONER ANGUS: Q. Is not your argument that the Board does not face either of the two difficulties? Therefore it is understandable that you wish to avoid these difficulties, and the reason for having the regional differentials which you dislike, is it not possible that these regional differentials were tolerated because of other reasons, reasons other than evaluating the conditions which you describe?

A. I would not want to convey that impression in the words you use.

Q. And you say:

"It is understandable that rather than become committed to either of the above courses of action the Board should have taken the position that regional comparisons of rates by themselves were irrelevant to the problem of

discrimination."

A. Yes, sir, as applied to regional discrimination. I think that is really an illustration of the difficulty which the Board faces in approaching it from the standpoint of unjust discrimination.

Q. Has not the Board rather assumed that regional differences were justified, anyway?

A. Well, that is the difficult point in attacking them. But they are not required to be justified to begin with; and instead the Board might turn to the railways and say: Why should these not be the same? And then turn to the shipper and say: Why should they not be different?

If there are good reasons why they should not be different, I do not think the shipper can get very far under that set-up.

(Page 11600 follows)

MR. EVANS: I think I might add, Dr. Angus, that your question points to exactly my difficulty, because it is alleged to be the failure of the Board to face up to these alternatives, neither of which they have to face up to in any unjust discrimination case as I see it today, that led them to the position that the Brief suggests. I think a question was put by the Chairman earlier, and he referred to Section 319, and I think it is worth reading this Section of the Railway Act:

"319. Whenever it is shown that any railway company charges one person, company, or class of persons, or the persons in any district, lower tolls for the same or similar goods, or lower tolls for the same or similar services, than it charges to other persons, companies, or classes of persons, or to the persons in another district, or makes any difference in treatment in respect of such companies or persons, the burden of proving that such lower toll or difference in treatment does not amount to an undue preference or an unjust discrimination, shall lie on the company."

Then, if I might turn to page 6 of this Brief on "Regulatory Legislation". I am afraid I am on much the same sort of question, but I want to boil it out as much as possible. The suggestion there is, or is it not, that one of the difficulties of meeting this test of unjust discrimination is that there is what you call an atomization of all general complaints, and that the total impact of any difference in rates can be subdivided into such minute fragments that they can be ignored for all practical purposes. Do you wish it to be implied from that that when it comes to regional complaints the Board atomizes or subdivides these complaints

into such small fragments as to give the impression that in these fragments they are unimportant?

A. In that connection, we might harp back to our famous town of Simcoe case. The Board insists that the particular detriment be shown, and in that case we have already discussed, in the application of the town of Simcoe, the complainant showed some detriment, which was admitted by the Board, but no sooner had that been done than it became apparent that the issue must be decided on other grounds, because other towns did not have town tariffs, and if this particular complainant were satisfied, it would involve the whole rate scale as a whole. In other words, the whole nature of the complaint was one of a general complaint notwithstanding the requirement that the complainant show his particular detriment.

Q. Is that all you have in mind 'as to atomizing the complaints. -

A. Where the particular shipper complaining of a regional rate difference is required to show his detriment, I think that is the meaning intended there.

Q. Does not the accuracy of that comment, or the propriety of that comment, depend on whether the Board really does subdivide the complaint down into dollars and cents evaluation?

A. They do not subdivide them down in actual practice. They deal with a small one as it comes up, and unless there is almost a mass movement to show detriment, then it is impossible to attack two regional rate scales.

Q. "Atomizing grievances has the effect of making it easier for the large shipper to establish the validity of his complaint." Isn't that a plain suggestion that they are evaluating this complaint on the size of the shipper?

A. If a large firm is located in a small town and has no town tariff, it seems to me that your case would be that that would perhaps call for the extension of town tariff privileges to that point, but I am not sure that the case of shipping in a small point would be sufficient to upset the whole rate structure.

Q. Upsetting the whole rate structure -

A. Abolishing the distinction between town tariffs and standard rates, in the case mentioned.

Q. Apart from the town of Simcoe Case, can you point to any practice of the Board of atomizing grievances in the way that you suggest on page 6?

A. I am suggesting, not that they have done this substantively, but by the requirement showing a particular shipper's complaint, the effect is to do that.

Q. You say that because they want to be sure that a complainant has received some detriment, that that is the atomizing process to which you object?

A. In the case of regional discrimination.

Q. In the Town of Simcoe Case, you adhere to the view that the Board was not moved in that case to find as it did because of the 50 year delay there had been in raising the question.

A. I think the reason given for not acting in the Simcoe Case was that the issues were much wider than stated by the complainant; in other words, only holding that one particular item of detriment against the town tariffs as a whole, the Board did not feel like abolishing - -

Q. Well, I can only refer you to page 330 where they measure the hardship and detriment by the fact that it had not been introduced for a great many years. Then, if you turn to page 9, you there begin to deal with the principle of having the statute maintain a relationship in rates, and

you point to the Maritime Freight Rates Act without adopting the principle of that Act otherwise, in these terms, at the top of page 10:

"The significant point of this section lies in the nature of the directive given to the Board which is not paralleled anywhere in the Railway Act. The Board has been directed to maintain certain relationship between the rates in two regions."

Now, I suggest to you that the Board is directed to do nothing of the kind in the Maritime Freight Rates Act. I suggest to you that the Board is directed to maintain rates in one region 20 per cent. below what they were or would otherwise be.

A. Isn't that a relationship between rates?

Q. Not in two regions, in one region.

A. Well, it amounts to two regions; you cannot have a relationship without two regions.

Q. You cannot have a relationship between rates normally and reduced rates in one region?

A. I understood you to say there was no relationship; isn't the relationship that the Maritime rates should be 80 per cent. of the rates in Ontario and Quebec?

Q. No. Then you go on and say, "The effect of this provision is to alter fundamentally the Board's responsibilities in rate regulation," and then further down, "It is submitted that the Railway Act should be amended so as to establish the Board's responsibility with regard to the form of the rate structure on a basis similar to that which it now has by virtue of the Maritime Freight Rates Act."

Are you wishing the Commission to understand that your interpretation of the Maritime Freight Rates Act is that that Act prescribes the form of the rate structure?

A. It prescribes the relationship of rates which must exist.

Q. It prescribes, does it not, an amount of 20 per cent. below normal rates?

A. Normal rates, and the normal rates are those rates in Ontario and Quebec.

Q. Well, there is no use asking you about the Act because I do not think that is to be found there anywhere.

MR. FRAWLEY: Are the Maritime rates not 20 per cent. below Ontario and Quebec?

MR. EVANS: They are 20 per cent. below what they were on the date of the Act in the Maritimes.

MR. Covert: I would not profess to know as much as the railway counsel could tell the Commission, and I think perhaps they could correct me if I am wrong. My understanding is that the rates in the Maritimes generally were the same in 1927 as were in effect in Ontario and Quebec. There were, however, some rates in the Maritimes which were lowered, and if there were any lower rates, those lower rates would still be in effect, and be 20 per cent. less by virtue of the Maritime Freight Rates Act. I would like to know if, generally speaking, the Railway counsel will agree with that?

MR. EVANS: Well, I do not know what the differences were, but I know that the Act makes it perfectly clear that there was to be substituted for the existing tariffs that were in effect on the date that the Act went into effect, other tariffs that were to be 20 per cent. below, and that the rate-making machinery under the Act was to go on by increasing and decreasing in accordance with cost of transportation, and that was under 32B, and by changes made under 32C the relationship to be retained was that the rates to be charged should be 20 per cent. below what the Board should

find to be normal rates.

THE WITNESS: What about the preservation of those statutory advantages? Doesn't that call for a 20 per cent. reduction?

MR. EVANS: I would be glad to argue that with you, but I want to finish -

MR. FRAWLEY: There were schedule A rates in the Maritimes, as I understand it, and they were in force in the Maritimes.

THE CHAIRMAN: Are they still in force there, subject to the 20 per cent. reduction?

MR. FRAWLEY: Yes.

MR. MATHESON: My understanding is that the schedule A rates in effect in the Maritime Provinces as reduced by the Maritime Freight Rates Act, would be subject to further reductions to the same relative extent if the schedule A rates in Ontario and Quebec were reduced or the reductions in Ontario and Quebec disallowed under Section 8 of the Maritime Freight Rates Act.

(Page 11610 follows)

MR EVANS: That is not because the Act fixes the form of the rate structure; that is because you could not preserve an advantage if you were going to permit the railways to make similar reductions generally elsewhere.

THE CHAIRMAN: Yes. Well, I think section 8 of the Maritime Freight Rates Act makes it very clear that the intention is to preserve an advantage.

MR EVANS: Preserve 20% advantage.

MR O'DONNELL: On those that came in in July 1927.

MR EVANS: It has been said that the Act prescribes the form of the rate structure, and I say it does nothing of the kind. It does not purport to change the form of the structure at all, it just reduces and gives that preference.

THE CHAIRMAN: All right, go on.

MR EVANS: Thank you, Mr. Darling.

COMMISSIONER INNIS: Q. At the bottom of page 6, Mr. Darling, in this last brief, you say atomizing agreements has the effect of making it relatively easier for the large shipper. I wondered why you deliberately left out any reference to the large railway.

A. How do you mean, sir? That the railway would prove unjust---

Q. Make it easier for the large railway to establish the validity of his position without using complaint?

A. I had in mind mainly the shipper's position there, sir.

Q. Throughout this you assume that the railways are more or less a base from which you proceed?

A. I think so, yes, if I understand what you mean.

THE CHAIRMAN: Has anybody else any questions?

MR O'DONNELL: I have a few questions, my lord.

CROSS-EXAMINED BY MR O'DONNELL:

Q. Mr. Darling, the equality of rates paperwise, I think we can agree is one thing, and the actual effectual equality and practice might be quite another thing?

A. That is true.

Q. I think it has been said by others, and I assumed you might agree, that absolute equality of rates is something that is impossible of achievement in actual practice?

A. I suppose that is obvious also.

Q. And I think we could agree that during the course of the years, and particularly by reason of these rate changes, increases which have taken place in the last few years, the spread between the levels of rates which had previously prevailed east and west has been closed very considerably?

A. I don't know that I would go along with the "very considerably", but there has been a trend in that direction.

Q. They are much closer now than they were ten, twelve, fifteen years ago?

A. There have been changes.

Q. Now, I think you would also agree that, when endeavouring to weigh the advantages or disadvantages of any region or section, all the rates then in effect and their effects revenue-wise should be considered?

A. I think we suggest that.

Q. And that, you would agree, would prevail not only when you were making comparisons east and west, possibly, but also in the case of Alberta as a region, comparing it with other regions?

A. I do not quite see -- what do you mean by that?

Q. Well, if you are going to compare the advantages of Alberta, or, rather, if you are endeavouring to compare Alberta's position transportation-wise with that of other

regions, then you must compare the whole picture?

A. Well, we are not trying to equalize transportation conditions; we are equalizing the level of rates. Now, just how that---

Q. Well, that is part of the transportation problem, is it not?

A. Well, it is a different matter from the equalization of rates, I think.

Q. That may be. I am just saying that if you wish to consider the advantages, or, rather, the disadvantages of Alberta from the point of view of the freight rate structure, and particularly from the point of view of the rates which prevail in Alberta traffic, as compared with some other region, then you must look at the entire situation?

A. Did we not do that in the exception that we permitted to equalization.

Q. I am asking you if that is not what you must do?

A. Yes.

THE CHAIRMAN: What have you in mind, Mr. O'Donnell, as these other circumstances?

MR O'DONNELL: I have in mind, for instance, that a certain portion of their traffic travels on Crowsnest Pass rates and depressed livestock rates, and things of that kind -- that we must take the advantages and the disadvantages when endeavouring to arrive at the relative position of Alberta with other regions in the country.

THE WITNESS: I do not see how that affects the proposition of equality.

MR O'DONNELL: Q. Well, this Commission is to look into the various economic, geographic and other disadvantages under which certain sections of Canada find themselves in relation to the various transportation

services therein.

A. Well, isn't the answer that I---

Q. All I am asking you is, in weighing the disadvantages under which Alberta may think it has its transportation services as compared with other regions, whether the whole picture should not be looked at?

A. Well, I think I have answered you twice on that.

Q. Do you agree with that or do you not?

A. I will refer you to page 18 in section (f) following where we state what differences in regional conditions should be taken into consideration.

THE CHAIRMAN: Q. That is in the other brief, is it?

A. That is in the first brief, sir.

MR O'DONNELL: Q. Page 18 what?

A. In that section (f) following, where we discuss the possible departures from regional equalization, and that includes, I believe, all the advantages and disadvantages.

Q. That is all I am asking you to agree to. Now, would you also agree that a region whose traffic consisted of a large percentage of low-grade traffic moving at very low rates, and a small percentage of high-grade traffic, ought to expect to be charged a relatively higher rate on the small percentage of high-grade traffic than a region where high and low-grade traffic maintained an even balance?

A. Once again, only where you produce regional differences of the type we have described there, and in that case we would not make the distinction between the low and the high grade, but would make the regional difference apply equally to all traffic within the area.

Q. Were you here when Mr. Moffat testified for Manitoba?

A. For some of the time.

Q. Do you remember his Exhibit 326 and the study that he made in connection with it?

A. No, I do not remember. What was the particular---

Q. Well, he made a study and arrived at the conclusion that there was a difference under the present rate structure of I think it was 3.2% as between east and west today. Have you made any study such as that?

A. No.

Q. Nor have you made any such study with respect particularly to Alberta's position?

A. No.

Q. And you have no study showing the amount of traffic which moves in Alberta itself and in and out of Alberta and the rates at which it moves?

A. That would be rather a compendious study, but we certainly---

Q. You have not anything like that?

A. No.

Q. And your study from the point of view of comparing rates has been restricted to an examination of the class rates, for instance, which you set out in the appendix to your brief, comparing the class rates -- I think you took the class rates -- in the different regions?

A. Well, I have looked at the commodity rates and the competitive rates. I have made some study of all the rates.

Q. But you have no figures showing the extent of the movement of the traffic on those various classes?

A. We are waiting for this way bill study for that.

Q. I see; all right. Now, assuming that you ask this Commission to conduct an investigation into the matter of equality, and assuming that the investigation showed that the Board of Transport Commissioners had under its adminis-

tration through the years brought about a situation whereby it has achieved substantial parity of levels within the limits that I think Mr. Moffat said was about 3.2%, and Dr. Britnell agreed might be rough justice in connection with that problem, as between east and west, and taking all the rates and all the freight rate revenues and the service performed in each region, what would be the position of Alberta with respect to revising the rate structure? Would you still wish---

A. We would still go along with the Canadian Pacific and perhaps a little further in asking for equalization.

Q. You would still advocate an entirely new rate structure, putting into effect these suggestions that you have, which I think we could agree would undoubtedly involve a very protracted study?

A. I do not agree with that at all.

Q. You do not think it would?

A. Not at all.

Q. And which might involve a considerable number of rate increases, in the west even?

A. It might involve rate adjustments of one sort or the other. I do not agree that it would be a question of study. You are dealing with class rate scales, which are not based on any study of traffic movements particularly.

Q. Well, now, you made some reference to the I.C.C. as having imposed flat maximum increases in certain cases, and you are aware, are you not, that that resulted, on my instructions, in increases in the class rates and on many commodities which ran as high as approximately 80% since 1946?

A. The horizontal increases in the United States?

Q. Yes.

A. Well, there have been increases aggregating up to

66%, I believe.

Q. Yes; and by reason of having imposed maxima on certain commodities, the general percentage increases required to produce revenue on all other commodities were considerably in excess of what they would otherwise have been?

A. I do not think I have noticed where they have made that statement.

Q. Well, did you look into the effect of those various increases?

A. I note that the increases prescribed were horizontal increases for a great many rates, with limitations, but I do not recall any statement that the percentages were altered considerably by virtue of the maxima imposed.

Q. Did you compare the changes in the class rates since 1946, or even in any commodity rates, and did you see that the increases were cumulatively greater than the general percentage increases?

A. I do not think I understand your question.

Q. Well, by reason of maxima having been fixed on certain commodities, and by reason of making those increases less than the general percentage increase granted, the additional revenue had to be found some other way, did it not?

A. I suppose that would follow.

Q. And would not that result in other commodities than those which had the maxima on them having to carry higher increases than would otherwise have been the case?

A. That would follow logically, but I am not aware that it amounted to anything that the Commission took notice of.

Q. Well, you did not look into it yourself?

A. I have looked into the increase cases, some of them.

Q. Did you find any commodities that had increased since July 1946 by approximately 80%?

A. I cannot say that I recall just that, no.

Q. Well, if you did not look at it, then I won't ask you any further questions about it. Now coming back to your suggestion and to the discussion which you had with the Chairman and with Mr. Evans concerning equality and the various exceptions which you say might be justified, if I understand your proposition correctly it amounts to this, that your suggestion is that the Board conduct a study now, and that all these rates that you are speaking of be made equal, and that after that has been done, then that such exceptions as may be warranted can be handled by the Board and would have to be justified by the railways as and when they were put into effect; is that it?

A. I do not say that the railways would have to justify every exception, but there would at least be a basis for judging in such exceptions which did arise afterwards.

Q. Isn't that merely the reverse, the procedure which is in effect today but in reverse, as the Chairman suggested to you? That is, the Board would not avoid any work for itself?

A. It would not take upon itself any extra work after the equality had been arrived at.

Q. Well, now, on the assumption that the exceptions which are presently in force are justified or are justifiable, wouldn't we be right back, after doing a lot of paper work and a lot of study and a lot of reviewing, right back where we are today, practically?

A. Well, if you mean that the study would reveal that

the exceptions were now justified, I might refer you to Appendix C, which is on page 54, showing the difference between western distributing and eastern town tariff rates, and are you saying that the study would find that each of these figures now would be justified, and all these other differences---

Q. Well, there are a lot of paper rates in there, are there not?

A. I do not know. They are all rate scales. I do not know how much they are used.

Q. You do not know how much traffic moves on them or---

A. I would not say the eastern town tariffs were paper rates.

Q. Possibly not; but some of the others. In any event, wouldn't we be right back where we are today, as far as the problem of exceptions to equalization is concerned?

A. No, indeed. You would have removed all these differences which there was no adequate justification for.

Q. Well, but the exceptions that would prevail under your suggestion might quite well be such as would allow for those very differences as they stand today?

A. Well, let us take a case; let us take a commodity mileage rate on wool in eastern Canada and the same thing in western Canada. Now, we have said that those should be equalized. Now, what exceptions are you saying?

Q. I am just asking you, if an exception were to be claimed by the railway under your scheme, whether the railway would not have to go back to the Board and justify the exception, rather than, as the situation is today, having the rate in and allowing somebody else to complain?

A. I think you are confusing the idea of exception. We are only advocating what in large part the railways themselves have proposed to do.

Q. Yes, that is true.

A. The exceptions come in the case of particular rates, and if they were a competitive rate, as we say, the rate would go in just as other competitive rates, and there would be no necessity to appear and argue with the Board as to the justification for that.

Q. Well, that is the situation today?

A. That is right.

Q. And the situation after going through your scheme of equalization would still be that, would it not?

A. Excepting that the rates would be changed and equalized.

Q. But if an exception were to be put in under your scheme, then the railway would have to justify the exception upon somebody else's complaint?

A. We have said that cost of service and density of traffic were not justifiable exceptions. Now, if you can think of any exceptions that would be required outside of that -- there is competition, there is the particular movements like export rates and that sort of thing; those would all be left pretty much as they are now; as between types they would be equalized.

Q. And how much better off would we be than we are today, from the point of view of the practical solution of alleged discriminations?

A. You would have removed these discrepancies which are now based on reasons which cannot be supported.

Q. In your view?

A. Well, I believe the railways are more or less according to that view, yes.

Q. Some of them, in some cases, yes; but in your view there are more than the railways think?

A. That is right.

Q. And those, we could agree possibly, have been reviewed through the years by the Board of Transport Commissioners, and the reasons for them explained many times?

A. They have come up from time to time, but I do not think there has ever been an attempt of the Board to justify them. The Board has merely been concerned for people to show why they should not be as they are.

Q. Well, do you agree with this, that as far as the different standards entered into, or effective rates based thereon, the Board has said that there are justifications for different rates in different sections for identical mileages?

A. Of course, we do not agree with that.

Q. No, but you will agree that the Board has taken that position and has reviewed those differences?

A. It is common knowledge what the Board has done.

MR O'DONNELL: I think, my lord, that possibly Mr. Evans has covered the rest. I might just refer, however, to the numerous cases wherein the Board's point of view with respect to discrimination has been set out. They are conveniently to be found at page 47 to page 51 of the 21% case. There is a whole array of those judgments, and I do not think that I need say anything more than refer to them.

THE CHAIRMAN: Do you know whether this section 319 has ever been made operative ever been invoked, Mr. O'Donnell?

MR O'DONNELL: I think that has been reviewed many times, my lord.

THE CHAIRMAN: And 320, then, of course, follows on.

MR O'DONNELL: Yes. And the other day your lordship asked whether the words "under substantially similar circumstances and conditions" had been reviewed.

THE CHAIRMAN: That is in 314.

MR O'DONNELL: Yes. Your lordship will find at page 50---

THE CHAIRMAN: No, I did not ask that.

MR O'DONNELL: The other day.

THE CHAIRMAN: No, what I asked the other day was whether the words "passing over the same line" had been decided.

MR O'DONNELL: At page 50 of the same judgment there are a number of cases cited.

THE CHAIRMAN: On what?

MR O'DONNELL: On those words "under substantially the 'same conditions'".

THE CHAIRMAN: Well, that is not the point. My reference to those words "substantially the same conditions" and so on was a question addressed to Mr. Frawley, whether he would strike that out of the section or not ; but what I am seeking advice upon is whether there is an interpretation of the words "the same line or route".

MR FRAWLEY: I still have to address myself to that.

THE CHAIRMAN: I thought maybe Mr. O'Donnell was going to give me something.

MR O'DONNELL: No, I haven't at the moment. I will endeavour to find something on that too, my lord. That is all I have to ask.

MR SINCLAIR: As to section 319, my lord, I think one of the cases that is of interest is Conrad Mines v.

White Pass and Yukon Railway, reported in 11 C.R.C. 138. That was dealing with the old section which was 77 of the old Railway Act, which is now section 319, and it was held that the railway had not satisfied the onus on them in that case.

THE CHAIRMAN: While you are on this, not to create any discussion at all, but in section 320, in the next to the last line, there is the word "unduly", which appears to me to be a very peculiar word.

MR SINCLAIR: I will be glad to look that up and see if I can find a case, my lord, that turns on that.

MR FRAWLEY: On the same page of Coyne, my lord, from which Mr. Sinclair was reading, there precedes it another notation of rather a different sort. It says:

"Notwithstanding the provisions of section 319, the Board has held in regard to commutation and excursion rates that the party who alleges that there is unjust discrimination should give 'some affirmative evidence that the exercise of the company's discretion in unfair, unreasonable or results in discrimination.'" And the cases cited are Toronto v. Grand Trunk, 11 C.R.C. 370 -- these are all in Coyne at page 323 -- Winnipeg Board of Trade v. C.P.R., 36 C.R.C. 100, and Esterbrooke Limited v. C.F.A., 37 C.R.C. 134.

MR SINCLAIR: The most recent case of all, my lord, is also there in Coyne at page 423, and that is Alberta Motor Transportation Association v. The Railway Association, 54 C.R. & T.C. 165, at 169.

MR FRAWLEY: It does not say what it decided.

MR SINCLAIR: It is in support of the proposition of the early case I cited, to show/^{how}long that proposition had been in effect.

THE CHAIRMAN: 54 Canadian Railway Cases?

MR SINCLAIR: Yes, 165, at 169.

(Page 11628 follows)

MR. FRAWLEY: Then my lord, I just have one more which is not cited - Plunkett & Savage v. Express Traffic Association.

MR. EVANS: That is the one that Mr. Darling put on the record.

MR. O'DONNELL: That was cited the other day.

MR. FRAWLEY: Not in the same connection that I am citing it. Plunkett & Savage v. Express Traffic Association, 28 C.R.C. 402 at 406 and I read these five lines:

"Mere mileage comparisons, therefore, between different sections of a railway need to be supported by some evidence as to similarity, if not identity of conditions before that prima facie case is made out which shifts the burden to the transportation company".

MR. SINCLAIR: That is what it says in the section.

THE CHAIRMAN: Does that case deal with Section 319?

MR. FRAWLEY: The citation that I have does not show whether it is dealing with 319 but it speaks about the burden on the transportation company. I would take it from that it did.

MR. O'DONNELL: My friend might have read just a few more lines.

THE CHAIRMAN: I just want to make sure where you are. When you advance the principle of equality in a freight rate structure, as you do - mileage equality, you do not only advance it as between the Eastern region of Canada and the Western region or do you make it applicable all over Canada?

MR. FRAWLEY: That is what it results in.

THE CHAIRMAN: One hundred miles in Nova Scotia must be the same as one hundred miles in New Brunswick?

MR. FRAWLEY: That is right, all other things being

equal.

THE CHAIRMAN: It is not only one hundred miles in Alberta?

MR. FRAWLEY: Of course the Maritime Freight Rates Act comes in in New Brunswick.

THE CHAIRMAN; Yes, it gives the 20% rebate. That is a different question.

MR. O'DONNELL: Just ahead of the short extract which my friend read which began "Mere mileage comparisons, therefore ..." appears these words:

"Mere rate comparisons are not conclusive. No inferences can be drawn from mere comparison of distance on different portions of railways. Where a complaint of discrimination is raised on mere comparison of distance, the Board has held that this should be supported by other evidence.

Without exhausting the generality of evidence, it has been held that circumstances in relation to cost of construction, maintenance and operation, volume of traffic etc., are material. Mileage alone is not a rigid yardstick of discrimination".

Then there are twelve lines ahead of those that my friend read.

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EXAMINATION BY MR. COVERT

Q. Now Mr. Darling, what I wanted to find out was to get down to the root of Alberta's case, if I could. Now, as I understand it you say that if there is a shipper in the East and he ships a carload of peas 200 miles, we will say, at 60¢ a hundred weight and there is a shipper in the West who does the same thing for the same distance and pays a rate of 70¢, now what you say is that because the shipper in the West cannot show unjust discrimination he cannot get

the 60¢ rate?

A. Not in a proceeding trying to prove unjust discrimination.

Q. Now, you say that if both shippers were in the same region it would be easy to prove unjust discrimination?

A. No, I don't go that far, Mr. Covert. I think that unjust discrimination is much more narrowly defined as there must be some connection between the two shippers.

Q. If the two shippers were in the same town and in the same circumstances today and in the same region you could not have a 60¢ rate and a 70¢ rate for either?

A. And as a matter of fact you would not likely have the difference if they were in the same region. Today the rate is the same in Manitoba and British Columbia. We are merely saying it should be extended.

Q. Again, as I understand it, what you say is that if there was equalization of the rates between the East and the West then this difficulty would not arise. You would start off with equality and there are a lot of these cases in which you would have to prove unjust discrimination, that is, regional discrimination?

A. That is right.

Q. Now, there was one other phase of the matter. I don't want to go over this all again, but dealing with competitive rates, you recall - I have not the page of the brief before me, but I think it has been thrashed about so much that you will recall it. You said that this should be under the continuous study of the Board of Transport Commissioners as to the extent of the competitive and the compensatory nature of the rates. Now, I want to find out just what you have in mind as to how the Board would deal with the problem of determining the compensatory nature of any freight rate. What do you suggest they do?

A. I have not formed any opinion as to any formula that might be used in that case. I think I said before, that naturally, in the course of this, they would begin by certain rule of thumb methods more or less to uncover, if you like, those rates which might be non-compensatory, but there may be different conditions depending on the type and volume of traffic involved. I have no formula to recommend.

Q. That is what I wanted to find out. You are not suggesting that they make examinations of costs in each compensatory rate, the cost of movement of the goods?

A. Not in the case of these increases, no.

Q. I suppose they might apply several tests, rules of thumb, as you call them, for instance per ton mile and per car mile and perhaps a percentage of the normal rate?

A. That would be possible, yes.

Q. Now, do you know whether or not that is the practice in the Interstate Commerce Commission?

A. I am not familiar with what they actually do.

Q. Now, have you any idea on this continuous study, whether or not once the waybill study was complete and the railways and the Board of Transport Commissioners had perhaps obtained some valuable information from that, if conditions did not affect it, would that be, do you think, perhaps a guide over the area, or do you think that this should be a continuous study, that there should be always be a waybill study in process?

A. I think we should like the waybill study to be continuous as it is in the United States.

Q. As it is in the United States, do you say?

A. Yes, not the same study, I don't mean, but the continuity to be the same.

Q. That is what you have in mind; but I understood you to say that it is not just for the competitive rates but it is

to give the Board of Transport Commissioners a wider knowledge about all traffic and so on so that they can deal with all rates?

A: Yes. Of course, it provides a lot more information than just on competitive rates.

Q: I think that is all I have to ask.

MR. FRAWLEY: I only want to say that I will have to put Mr. Darling back in the box for a few minutes at a later time to deal with the two or three matters which arose during his examination in chief in reference to Professor Angus' question.

THE CHAIRMAN: Do you mean tomorrow?

MR. FRAWLEY: I mean before my case is completely closed. I want to say, sir, that we have not had any time to go into that matter in itself; it is something we want to know something about.

THE CHAIRMAN: About what?

MR. FRAWLEY: Well, Professor Angus asked a question as to whether or not we could file a supplementary schedule G, without taking time at the moment to go into it and explain it.

THE CHAIRMAN: All right.

MR. FRAWLEY: Then I am ready to go on with the next brief, sir.

MR. O'DONNELL: It is only on that one point in respect of that one brief that we are to have Mr. Darling back?

THE CHAIRMAN: Well, when he comes back, Mr. O'Donnell, we will hear you if you wish to ask him other questions.

MR. O'DONNELL: No, I just wanted to know what the arrangement was, whether he is merely to speak to

this one part that he has been examined on.

MR. EVANS: My thought was that it might be necessary if new material is introduced to ask the Commission for the right to cross-examine. If it is to be split up like this -

THE CHAIRMAN: Of course this goes without saying.

MR. NOLAN: My Lord, before the evidence is reached, you will perhaps remember, sir, that at the sitting in Alberta I appeared for the City of Edmonton, the City of Calgary, the Calgary Board of Trade, and the Edmonton Chamber of Commerce. At that time certain evidence was called from business men who lived in the cities of Calgary and Edmonton. In addition a written submission on behalf of those four parties was offered to the Commission.

(Page 11640 follows)

In that we stated that we hoped at a later date, and perhaps in Ottawa, to associate ourselves with the long and short haul submission being prepared by the provincial government, and in which we assisted to some extent.

The importance that those whom I represent attach to this matter, is indicated by my presence here today. And I desire only at this stage to go on record as indicating that we associate ourselves with the brief about to be presented.

THE CHAIRMAN: Very well, Mr. Nolan.

MR. FRAWLEY: The next brief has been called the long and short haul rule. I shall take no time at all by way of preliminary observation except to say that it is this matter --

THE CHAIRMAN: May we take a five-minute recess?

---Recess.

---Upon resuming:

MR. FRAWLEY: I call Mr. Hu Harries.

MR. HU, HARRIES, called.

MR. FRAWLEY: I shall proceed at once to put the brief into the record. I was going to say, when we took our adjournment, that this point of ours with respect to the discrimination of the long and short haul is something which has been a matter of great concern to the people of the Province of Alberta for many, many years, and that we welcome the opportunity now of placing it before this Commission. We have done a considerable amount of research on it, which we think is no more than the importance of the subject warrants.

THE CHAIRMAN: There is an embodiment, I think, of your principle, in section 314, subsection 5.

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MR. FRAWLEY: Yes. That is a concept of the long and short haul route today, sir, and that is the section we want taken out completely. We have a new subsection to submit to the Commission.

THE CHAIRMAN: Yes, I thought so.

MR. FRAWLEY: Mr. Harries, you have taken part in the preparation of this brief?

A. Yes, sir.

Q. Have you done it alone or in collaboration with others?

A. In collaboration.

Q. With whom?

A. With Dr. Locklin.

Q. Dr. Locklin of the University of Illinois?

A. Yes, sir.

Q. To what extent have you been able to confer with Professor Locklin in the preparation of this brief?

A. I made five trips from Edmonton to Urbana in the past year, and Dr. Locklin made two trips up to Ottawa. And at that time several of us from Alberta came down to Ottawa to meet him there. So in all we have had seven meetings extending from one to four days, in the preparation of this brief.

Q. The brief is divided into several sections. Now, perhaps a preliminary word about the form of the brief might be useful.

A. In Part I we have attempted to outline the nature of the long and short haul differential. In Part II we have attempted to analyze historically the Canadian experience with this discrimination. In Part III we have analyzed the American experience with this same differential. And in Part IV we have listed our conclusions and brought forward certain

recommendations in connection with this discrimination.

Q. You are now going to deal with Part I?

A. Yes, sir.

Q. Then you will deal with Part II?

A. Yes, sir.

Q. Then Professor Locklin will deal with Part III?

A. Yes, sir.

Q. Will you proceed now to discuss the brief with the Commission?

MR. SINCLAIR: Is Mr. Frawley going to deal with Part IV?

MR. FRAWLEY: Oh no, we will all deal with Part IV, Mr. Sinclair.

Q. Will you now proceed?

A. The purpose of this brief is to record the history and practice of long and short haul discrimination in Canada and to propose remedies to alleviate its effects upon intermediate points. Particular attention is paid to the problem of long and short haul discrimination on transcontinental traffic because it is here that the most flagrant discrimination is found; and this discrimination is of particular concern to Alberta.

Q. As to that word "transcontinental", there may be just some misapprehension about the correct meaning or manner in which you use it. In what meaning do you use the term "transcontinental"?

A. We use that word when we mean traffic which travels from points in Eastern Canada to the Pacific coast, or traffic which travels from the Pacific coast to points in Eastern Canada, or Central Canada.

Q. Carrying on with your preliminary remarks, then?

A. Our reason for analyzing this problem thoroughly is that we are convinced that it is extremely important to

the economy of Alberta, and further that it is one problem which has not been critically analyzed for some time. We also wish to point out that the burden of our submission is not that there is either more or less discrimination now than in previous years. It is quite true to say that if all discrimination were removed tomorrow, we would still find it necessary to bring the evidence contained in this brief before this Commission. We want to have a principle established. The establishment of this principle does not depend upon contemporary arrangements in the matter of long and short haul discrimination, but draws its strength from the fact that this problem is ever present in the Canadian freight rate structure, and should consequently receive attention.

It will be noted that some of the examples we use are not up to date in the sense that they contain comparisons which take account of rates recently put into effect. Aside from the physical impossibility of continually changing our examples with each new tariff, we felt that as we were dealing with a period of at least thirty years, it was quite in order for us to take for purposes of illustration, any part of that period which is representative. In our submission, and speaking particularly of the exhibit which we have filed in conjunction with this brief, a 119-page exhibit, -- that exhibit, I may say, deals with the period during July 1948 -- it presents a picture more favourable to the railways than the past history of this discrimination would warrant. It presents a picture which is representative, or which, if it does go to one side or the other, probably presents a fairer picture than we would get if we talked about 1935, the situation in 1935, in connection with this

matter.

THE CHAIRMAN: You refer to a principle which you wish to associate?

MR. FRAWLEY: Yes, sir.

THE CHAIRMAN: Regardless of actual discrimination, you say there is some principle, what is it?

MR. FRAWLEY: The principle will go to the very root of discrimination.

THE CHAIRMAN: What is it?

MR. FRAWLEY: State the principle.

THE CHAIRMAN: You stated the principle you had in mind as to equalization, and I was very glad to get it, because it made the following of your case much easier. Now, if we could have your principle in this one, we would know where to start from.

MR. FRAWLEY: I would propose right now an amendment to the statute which we suggest. I think that would bring it to a head immediately.

THE CHAIRMAN: That is the best way. That is the section you refer to?

MR. FRAWLEY: Yes. We will take out section 314, subsection 5, and put in a new section which we have for convenience numbered section 314-A.

THE CHAIRMAN: That is a very good opening.

MR. COVERT: Mr. Frawley might hand a copy of his amendment to the reporter and we could have it taken as read into the record now, because we have been talking about it.

MR. FRAWLEY: Yes. The reporter will see that that is done.

"LONG AND SHORT HAUL

NEW SECTION 314A TO REPLACE 314(5)

The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried in the same direction over the same line or route, is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the carrier has first established to the satisfaction of the Board that:

1. There is active and compelling competition at the competitive point which is beyond the control of the applicant carrier and such competition is absent at the intermediate point.
2. The rate which is proposed for the competitive point more than covers the additional expense incurred by the traffic to which it applies.
3. The rate to the intermediate point is just and reasonable.
4. The rate to the competitive point is not lower than necessary to meet competition.
5. The carrier can show a reasonable expectation of improved net earnings as a result of charging the competitive rate."

MR. FRAWLEY: Very well.

A. With the Commission's permission, I would like to read the first four pages of our brief which outline the problem of the long and short haul discrimination, commencing at page 1.

PART I - INTRODUCTION

A. The General Problem of Long-and-Short Haul Discrimination.

Long-and-short-haul discrimination is a special type of place discrimination and has been called

by one authority the "most extreme form of local discrimination". (Dewey, R.L., "The Long-and-Short-Haul Principle of Rate Regulation". Ohio State University Press, 1935.) Long-and-short-haul discrimination is composed of three elements:

- (a) a higher absolute rate for shorter than for longer distances,
- (b) shipments of like kinds of freight, and
- (c) shipments over the same route in the same direction, the shorter haul being included within the longer.

This type of discrimination has been the subject of controversy in Great Britain, in the United States and in Canada. In each of these countries railroad legislation has been designed to prohibit or control such discrimination.

The nature of the discrimination may be illustrated by the following example.

A _____ C _____ B

If a railroad charges a rate of \$1.00 per hundred pounds for transporting a certain commodity from A to B and \$1.25 for carrying it from A to C, the carrier is practising the type of discrimination to which we refer. A similar discrimination results if the rate from C to A is in excess of the rate from B to A.

The first illustration is an example of destination discrimination inasmuch as the shipment originates at A. The second illustration is an example of origin discrimination with the goods moving to A from either B or C. Every case of long-and-short-haul discrimination can be termed either origin or destination discrimination. It

is not unusual to find that both of them affect a particular community, and when this double discrimination is in force, the people of the community are likely to suffer both as producers and as jobbers.

The explanation of long-and-short-haul discrimination, like the explanation of other forms of discrimination, is to be found in the nature of railroad expenses. The fact that a large proportion of a railroad's expenses are constant or overhead costs, which in the short run do not vary with the volume of traffic, provides the key to the explanation. The railroad rates at the intermediate point C may be reasonable, but if competition makes it impossible to carry traffic from A to B at a comparable rate the railway will tend to lower its charge to B and take the movement. The railways will contend that as long as the through rate to B covers the additional expenses it occasions, the railways and all the shippers are better off.

I may say that in general we agree with this explanation, although it merely cites a problem and does not give a solution. We go on further to examine the problem and propose one solution to it.

B. The Forms and Causes of Long-and-Short-Haul Discrimination.

Competition is the leading cause of long-and-short-haul discrimination. This competition must, first, be more important at a more distant locality than at an intermediate locality, and, second, be so effective at the more distant point that the railroad cannot afford to reduce the general level of its rates in line with the charge to the more distant point. Long-and-short-haul discrimination is therefore the

result of the presence of competition at certain places and its relative absence at others.

It is convenient to distinguish four general competitive situations which give rise to long-and-short-haul discrimination.

(1) Competition Between Railway Routes Having Similar Mileage and Costs.

Railroads x and y have similar mileage and costs between points A and B. Points C and D are intermediate to B on railroads y and x respectively. Because of competition at B between railroads x and y on traffic from A the rate is depressed below the rate to the non-competitive points C and D. Long-and-short-haul discrimination is thus created at these intermediate points.

(2) Competition of a Circuitous Rail Route with a Direct Rail Route.

Railroad x forms a direct route between A and B. Railroad y is a circuitous route between the same points. Let us suppose that both railroads adopt the same distance scale of rates and that by railroad x the rate from A to B is \$1.25 and by railroad y the rate from A to C is \$1.40, and from A to B is \$1.50. Under these conditions the traffic from A to B would all move by railroad x. Railroad y's rate of \$1.50 would only be a "paper rate" because no traffic would move under it. If railroad y is to carry any of the A to B traffic it must meet the rate charged by x, namely, \$1.25. If railroad y reduces its A to B rate to \$1.25 it immediately creates long-and-short-haul discrimination at C where the rate remains at \$1.40.

(3) Competition of a Railroad with Carriers Having Lower Costs, e.g., Water, Pipelines, etc.

This situation is comparable to that outlined in (2) above. The difference is that the circuitous carrier has the lower rate.

Railroad x has a direct line between A and B, two points which are subject to competition by a water route y. Under the railway distance scale the rate from A to C on a certain article is \$1.00, and from A to B \$1.25. The water rate on the same article between A and B is 80¢. Under these conditions railroad x will have to meet the water rate at B or lose the traffic. (For convenience we assume absolute rate competition with no compensating rail advantages.) In meeting the water rate at B it creates long-and-short-haul discrimination at C where the rate remains at \$1.00.

(4) Competition due to Alternate Sources of Supply i.e. Market Competition.

Points A and D produce a commodity consumed at B and C. Railroad x has a distance scale/ ^{rate} of \$1.00 from A to C and \$1.25 from A to B. Railroad y has a rate (on the same scale as x) of 75¢ from D to B. Consumers in B will draw all their supplies from D unless railroad x gets the commodity to them from A at a rate of 75¢. In granting the 75¢ rate from A to B railroad x creates long-and-short-haul discrimination at C where the rate remains at \$1.00.

These examples illustrate the general forms and the causes of long-and-short-haul discrimination. All of the cases with which we deal in Parts II and III fall into one or other of these four types.

Part II begins with the Canadian experience, and

The first part of the report is devoted to a description of the experimental conditions and the results of the measurements. The second part is devoted to a discussion of the results and a comparison with the theoretical predictions.

The experimental conditions were as follows: The measurements were performed in a vacuum chamber at a pressure of 10^{-6} Torr. The temperature of the chamber was maintained at 300 ± 1 K.

The results of the measurements are shown in Figure 1. The figure shows the dependence of the measured quantity on the parameter x . The data points are shown as open circles, and the solid line represents the theoretical prediction.

The theoretical prediction is based on the assumption that the measured quantity is proportional to x^2 . This assumption is valid for small values of x , but it breaks down for large values of x .

The experimental results show that the measured quantity is proportional to x^2 for small values of x , but it deviates from the theoretical prediction for large values of x . This deviation is due to the presence of a background signal.

The background signal is caused by the presence of impurities in the sample. The impurities are located on the surface of the sample and they emit a signal which is proportional to the area of the surface.

The background signal can be eliminated by using a more pure sample. The results of the measurements performed with a more pure sample are shown in Figure 2. The figure shows that the background signal has been eliminated.

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section A thereof deals with the statutory history of the long and short haul rule in Canada.

The wordingⁱⁿ/subsection (3) of section 252, which is the one we detailed on page 5, is substantially the same as that contained in the present Act. That can be verified by checking it with the wording that we have in the present Act as detailed on page 9.

Prior to 1903, as we indicate on pages 6, 7 and 8, the discrimination sections deal first with personal discrimination and later on with place discrimination.

THE CHAIRMAN: Q. What are you reading from?

A. I am just summarizing what we have to say.

Q. All right.

A. They deal first with personal discrimination and later on with place discrimination. Without making any further reference to the matter of long and short haul rule, it might appear that the 1883 amendment to subsection 6 of section 17 of the Act of 1879, which we detail on page 7, was in fact a prohibition against long and short haul discrimination.

In our opinion, while there was a prohibition against personal discrimination, and while it really said that the railway should not discriminate between two shippers, let us say, in Calgary, or between two shippers in Vancouver, nevertheless that did not mean that it could not discriminate between shippers in Calgary and shippers in Vancouver receiving goods in all cases from Eastern Canada. So this section 323, subsections 3 and 4, is similar to section 314 for the most part, that is, as far as the long and short haul rule is concerned. It is section 314 with which we would be concerned.

THE CHAIRMAN: I just noticed that the phraseology refers to traffic passing only over the same portion of the line of railway; that is where equality is in force there. I am always trying to find out what is the meaning of a word such as "railway" in the present section 314.

MR. FRAWLEY: Yes, sir.

THE CHAIRMAN: All right, you may go on.

A. At the commencement of page 10 we briefly review the administrative history of the long and short haul rule in Canada and we have tried to deal with some of the significant cases regarding this discrimination other than sticking just to the trans-continental situation. That is, we have tried to deal with some important cases in the matter of long and short haul discrimination, regardless of where they happened to come about.

I do not want to go through all these cases and read them, but I would summarize our findings in connection with the administrative history in this matter by stating that our contention is that the attitude of the Board of Transport Commissioners in this matter has been essentially negative. That is, the discrimination has been permitted for the most part as a result of railway action which the Board has -- I would not say automatically, --- usually approved as it were in principle. And I think that the substance of that particular argument is quite apparent when we consider two decisions only. Now, considering the first decision, ---

THE CHAIRMAN: We will consider them tomorrow morning.

---The Commission adjourned at 4.45 p.m.
until tomorrow, Wednesday, December 7, 1949,
at 10.30 a.m.

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